



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

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# **Decision**

**Matter of:** Brandebury Aerostructures--Request for  
Reconsideration; Claim for Protest Costs

**File:** B-236792.5

**Date:** May 31, 1990

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E. Grey Lewis, Esq., McDermott, Will & Emery, for the  
protester.

Richard O. Duvall, Esq., and Richard L. Moorhouse, Esq.,  
Dunnells, Duvall, Bennett & Porter, for Canadian Commercial  
Corporation, an interested party.

Thomas G. Robisch, Esq., Department of the Navy, for the  
agency.

Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

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## **DIGEST**

1. Protest was properly dismissed as academic where  
protested contract was terminated because unmanned air  
vehicles solicited were no longer required; underlying  
protest became academic when no award would be made under  
the solicitation.

2. Where a protest is dismissed as academic because  
procured item is no longer required, there is no decision  
on the merits of the protest and therefore no basis for  
recovery of protest costs.

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## **DECISION**

Brandebury Aerostructures, Inc., requests reconsideration of  
our dismissal of its protest of the Department of the Navy's  
award of a contract to Canadian Commercial Corporation  
(CCC), on behalf of RPV Industries International, Inc.,  
under request for proposals (RFP) No. N00164-89-R-0464, for  
EXDRONE unmanned air vehicles. Brandebury also seeks  
reimbursement of its protest costs.

We affirm the dismissal and deny the claim for costs.

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Brandebury protested that the Navy improperly awarded the contract with the intent to modify it, issued a modification beyond the scope of the original contract, and made a bad faith determination that RPV was responsible. We dismissed Brandebury's protest as academic when the Navy reported that, due to a significant change in its requirements, it had terminated the contract with CCC and RPV for convenience. According to the Navy, the contract as awarded was for the production of a quantity of expendable air vehicles, but the government's requirements had changed to durable, reusable vehicles.

Brandebury contends that since it was not granted the relief it requested, that is, the award of the contract, its protest was not rendered academic by the termination of CCC's contract. In this regard, Brandebury contends that the termination was caused by RPV's failure to meet the Navy's requirement that Brandebury could have and has met. Brandebury also asserts that, notwithstanding the Navy's reasons for termination, the contract as originally awarded and amended was contrary to law, and Brandebury should recover protest costs for having brought a defective award and amendments to our attention.

We have recognized that a solicitation may be canceled and a contract terminated where the record shows the goods or services solicited are no longer required. See Billings Am. Indian Council, B-228989; B-228989.2, Dec. 29, 1987, 87-2 CPD ¶ 639; Norfolk Shipbuilding and Drydock Corp., B-219988.3, Dec. 16, 1985, 85-2 CPD ¶ 667. Here, the Navy concluded that it no longer required the expendable vehicles sought under the RFP, and Brandebury has not shown the agency's position to be incorrect. Nor has Brandebury shown the termination action was related to this protest. Because the RFP specifications no longer reflect the agency's actual needs, award under the RFP to any offeror would be improper. Under these circumstances, no useful purpose would be served by further consideration of the protest, and it therefore properly was dismissed as academic. See DHD, Inc.--Request for Recon.; Claim for Protest Costs, B-237048.3, Feb. 27, 1990, 90-1 CPD ¶ 237.

We also find no basis for Brandebury's claim for costs of pursuing its protest, including attorneys' fees. We have consistently held that a protester is not entitled to reimbursement of its costs where the protest is properly dismissed as academic. Global Fuels Ltd., Corp., B-225665.2, Mar. 27, 1987, 87-1 CPD ¶ 355. In this regard, we have found it inappropriate to allow recovery of such costs, absent a decision on the merits of the protest by our Office that a solicitation for, or award of, a contract does

not comply with statute or regulation.<sup>1/</sup> See Teknion, Inc.--Claim for Protest Costs, 67 Comp. Gen. 607 (1988), 88-2 CPD ¶ 213; Moody Bros./Troika, Int'l Inc./C.G. Willis, Inc.--Reconsideration, B-237278.4, Apr. 23, 1990, 90-1 CPD ¶ \_\_\_\_\_. Here, not only was no decision on the merits issued, but the record indicates the termination action was not related to the protest.

The dismissal is affirmed and the claim for protest costs is denied.

  
for James F. Hinchman  
General Counsel

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<sup>1/</sup> Under the proposed revision to the Bid Protest Regulations, if the contracting agency decides to take corrective action in response to a protest and so notifies our Office after the date for submission of its report, we may declare the protester to be entitled to recover reasonable costs of filing and pursuing the protest based upon the pleadings before us and the agency's action. See 55 Fed. Reg. 12,834 (1990).