



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lucas Place, Ltd.--Claim for Protest Costs
File: B-239539.2
Date: July 6, 1990

J. Michael Dorsey, Esq., McDowell, Rice & Smith, for the protester.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office will not award protest costs where the protest is properly dismissed after agency takes corrective action responsive to the protest.

DECISION

Lucas Place, Ltd. requests the costs of filing and pursuing a protest against its exclusion from the competition under solicitation for offers (SFO) No. MM090019, issued by the General Services Administration (GSA), for commercial office space. We dismissed the protest on May 16, 1990.

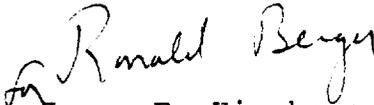
In its protest, Lucas Place asserted that GSA had improperly determined its building to be unacceptable and refused to provide it a copy of the SFO because prospective tenants asserted the building did not present a professional appearance. After the protest was filed, but before the submission of a report, GSA requested dismissal of the protest as academic on the basis that it had decided to solicit an offer from Lucas Place. We then dismissed the protest.

While Lucas Place concedes GSA's actions rendered its protest academic, it nevertheless requests that we determine that GSA violated the Competition in Contracting Act of 1984, 41 U.S.C. § 253 (1988), and award it the costs of filing and pursuing the protest, including attorneys' fees pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.5(d)(1) (1990), because GSA's decision to allow it to compete came only as a consequence of the protest.

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Under our Bid Protest Regulations, a protester is not entitled to reimbursement of its costs where, as here, the protest is dismissed as academic; an essential prerequisite to the granting of costs is a decision on the merits finding a violation of law or regulation. See Maytag Aircraft Corp.--Request for Reconsideration; Claim for Protest Costs, B-237068.2, Nov. 13, 1989, 89-2 CPD ¶ 457. Since we found no violation of statute or regulation here, and have no basis for doing so now, Lucas Place is not entitled to reimbursement of protest costs.^{1/}

The claim is denied.


James F. Hinchman
General Counsel

^{1/} We have recently published in the Federal Register (see 55 Federal Register 12834 (1990)) a proposed amendment to our Bid Protest Regulations that would provide for reimbursement of protest costs under certain circumstances where the agency decides to take corrective action in response to a protest. However, this proposed rule has not yet been finalized.