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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Hansen & Company--Request for Declaration of Entitlement to Costs

File: B-243704.2

Date: September 18, 1991

David R. Hazelton, Esq., Latham & Watkins, for the protester.
Barbara H. Vail, Esq., Department of the Treasury, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not entitled to the costs of filing and pursuing its protest where the agency took corrective action within 2 weeks of the day the protester first communicated its concerns about the procurement to the contracting officer, and within 1 day after the protest was filed.

DECISION

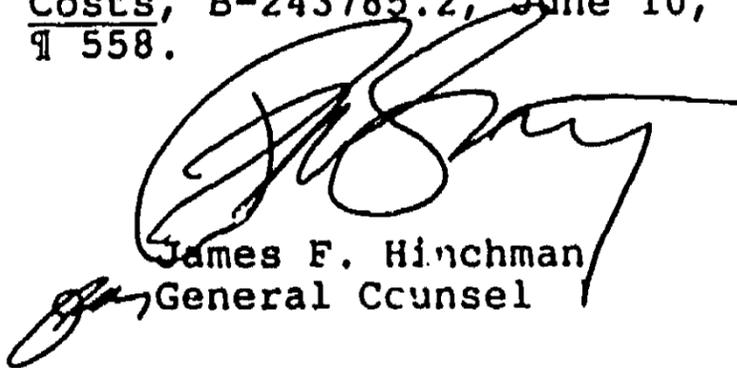
Hansen & Company requests that our Office declare the firm entitled to recover the reasonable costs of filing and pursuing its protest concerning request for quotations (RFQ) No. 91-100, issued by the U.S. Customs Service, Department of the Treasury, for new Smith & Wesson model No. 6906 pistols in exchange for used pistols from the inventory of the Customs Service. The protest, filed April 18, 1991, challenged the exchange anticipated by the RFQ as a violation of the statutory and regulatory requirements for full and open competition. On April 19, 1 day after the protest was filed, the Customs Service canceled the RFQ. By letter dated April 25, the agency advised our Office of the cancellation and requested that the protest be dismissed as academic. We subsequently dismissed the protest.

On May 2, Hansen filed a claim with our Office under our revised Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.6(e)), for the costs of filing and pursuing the protest. Pursuant to the revised Regulations, if the contracting agency decides to take corrective action in response to a protest, we may declare the protester to be entitled to recover the reasonable costs of filing and pursuing the protest, including attorneys' fees.

Hansen argues that although the agency canceled the solicitation 1 day after Hansen protested, the agency should nonetheless be required to compensate the company for the costs of filing and pursuing this protest because of negotiations between Hansen and the agency prior to the protest. Specifically, Hansen explains that it first communicated its concerns about the RFQ to the contracting officer on April 5--less than a week prior to the RFQ's initial response date of April 11. On April 9, Hansen also communicated its concerns to counsel for the agency, and in turn, the Customs Service rescheduled the RFQ response date for April 19 in order to consider Hansen's contentions. Although there was a second conversation between agency counsel and counsel for Hansen, the agency did not take corrective action until the day after the protest was filed.^{1/}

In adopting our revised Regulations, it was not our intention to award protest costs in every case where the agency takes corrective action in response to a protest. 55 Fed. Reg. 12,834, 12,836 (1990). Since our concern was that some agencies were not taking corrective action in a reasonably prompt fashion, our intent was to award costs where, based on the circumstances of the case, we find that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Here, where the agency takes corrective action and cancels a solicitation within 2 weeks from the first communication by the protester--and 1 day after the protest was filed--we find no basis for concluding that the agency unduly delayed taking corrective action in this case. See Pulse Elec., Inc.--Claim for Costs, B-243828.2, Aug. 19, 1991, 91-2 CPD ¶ ____.

Accordingly, Hansen's request for a declaration of entitlement to costs is denied. See Oklahoma Indian Corp.--Claim for Costs, B-243785.2, June 10, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 558.


James F. Hinchman
General Counsel

^{1/} In order to timely protest the terms of the agency's RFQ, Hansen was required to file in our Office prior to the time for receipt of quotations. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3,759 (1991). To meet this requirement, Hansen filed its protest on the last day prior to the date set for receipt of quotations.