



Comptroller General
of the United States

Washington, D.C. 20548

White
145735

Decision

Matter of: Dynair Electronics, Inc.--Request for
Declaration of Entitlement to Costs

File: B-244290.2

Date: September 18, 1991

Maurice J. Mountain, Esq., Barton, Mountain & Tolle, for the
protester.

Darleen A. Druyun, National Aeronautics and Space
Administration, 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 award of the costs of filing and
pursuing its protest where, in response to the protest, the
agency terminated the awardee's contract, and canceled the
underlying solicitation, within approximately 4 weeks after
the protest was filed.

DECISION

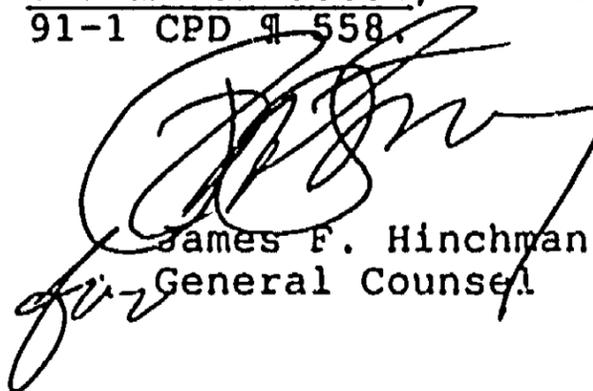
Dynair Electronics, Inc. requests that our Office declare the
firm entitled to recover the reasonable costs of filing and
pursuing its protest, filed on May 31, 1991, against the award
of a contract to Robert Slye Electronics, Inc. under request
for proposals No. 5-71939-070, issued by the National
Aeronautics and Space Administration (NASA) for a 50-channel
video/audio routing system to be installed at the Goddard
Space Flight Center in Greenbelt, Maryland. The protest
challenged whether Slye's proposal complied with the salient
characteristics set forth in the solicitation.

As a result of the review undertaken in response to the May 31
protest, NASA determined that award to Slye had, indeed, been
improper, and terminated Slye's contract for convenience. By
letter dated July 3, NASA advised our Office of its corrective
action, and stated that it would be resoliciting its needs in
the future under less restrictive specifications. On July 8,
our Office dismissed the protest because NASA was terminating
the contract and resoliciting the procurement.

On July 16, Dynair 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 both its proposal preparation costs and 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. Dynair argues that it is entitled to these costs because its protest forced NASA to reevaluate the award to Slye and prevented the purchase of approximately \$600,000 of electronics equipment that did not meet the agency's stated minimum requirements. Dynair argues, in essence, that since the nexus between its protest and the agency's corrective action is clear, Dynair should be reimbursed for the costs incurred in bringing this matter to the agency's attention.

As an initial matter, our revised Bid Protest Regulations do not anticipate reimbursement of protesters for proposal preparation costs in cases where agencies take corrective action. Id. Nor was it our intention to award protest costs in every case where the agency takes corrective action in response to a protest. See 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.

Even if we accept Dynair's contention that without its protest NASA might not have taken the corrective action now deemed appropriate, our Regulations do not contemplate reimbursement except in cases of undue delay by agencies. 56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R. § 21.6(e)). Here, where the agency took corrective action approximately 4 weeks after the protest was filed, we find no basis to conclude that the agency unduly delayed taking such action. Accordingly, we deny Dynair's request for a declaration of entitlement to its protest costs. 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