



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

Ahearn
146476

Decision

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

File: B-245912.2

Date: April 24, 1992

Steven R. Perles, Esq., for the protester,
Niketa L. Wharton, Esq., Defense Logistics Agency, for the
agency,
M. Penny Ahearn, Esq., John M. Melody, Esq., and David
Ashen, 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 agency promptly took
corrective action within 7 working days of when the protest
was filed.

DECISION

DCX, Inc. requests that our Office declare it entitled to
recover the reasonable costs of filing and pursuing its
protest against the award of a sole-source contract to Bruce
Industries, Inc., under solicitation No. DLA400-91-R-3779,
issued by the Defense Logistics Agency (DLA). The protester
contended that the agency improperly failed to compete the
requirement.

We deny the request.

DCX filed its protest on September 27, 1991. On October 8,
DLA acknowledged the merit of the protester's complaint and
notified our Office of the termination of Bruce's contract
for the convenience of the government and the agency's
intention to competitively reprocure the requirement. Based
upon this corrective action, we dismissed the protest as
academic.

In support of its request for a declaration of entitlement,
DCX essentially argues that it had to incur attorneys' fees
to overturn DLA's sole-source award, which had deprived the
firm of the opportunity to compete for the contract.

Where an agency takes corrective action prior to our issuing a decision on the merits, we may declare the protester entitled to recover the reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.6(e); Metters Indus.--Request for Declaration of Entitlement to Costs, B-240391.5, Dec. 12, 1991, 91-2 CPD ¶ 535. This provision is intended to allow the award of costs when agencies unduly delay taking corrective action in the face of a clearly meritorious protest. Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558. A protester is not entitled to costs where, under the facts and circumstances of a given case, an agency takes prompt corrective action in response to the protest. Id.

Here, the agency took corrective action within 7 working days of the filing of the protest. We view such action, taken early in the protest process, as precisely the kind of prompt reaction to a protest that our regulation is designed to encourage. It provides no basis for a determination that the payment of protest costs is warranted. We have held that corrective action taken by an agency within 2 weeks of when the protest was filed does not constitute undue delay in taking corrective action. Oklahoma Indian Corp.--Claim for Costs, supra. (In fact, the protester does not even argue undue delay on the agency's part.)

The request is denied.


James F. Hinchman
General Counsel