



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

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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.

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### 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.

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### 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 reprocur 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