



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sesc Halon Systems--Request for Declaration
of Entitlement to Costs

File: B-247008.2; B-247009.2

Date: June 3, 1992

Theodore M. Bailey, Esq., for the protester.
Katherine L. Riback, Esq., and John Brennan, 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 protests where no corrective action was taken by the agency with regard to the protest and, assuming corrective action was taken with regard to the other clearly meritorious protest, such action was promptly taken, precluding the award of costs.

DECISION

Sesc Halon Systems requests that our Office declare it entitled to recover the costs of filing and pursuing its protest, docketed as B-247009, filed in connection with solicitation No. F41691-92-M-0048, issued by the Department of the Air Force for maintenance of fire protection systems in government facilities. Protest B-247008 also was filed by Sesc Halon Systems under solicitation No. F41691-Q-1531.

We deny the claim.

Where an agency takes corrective action prior to our issuing a decision on the merits of a protest, we may declare a protester entitled to "recover reasonable costs of filing and pursuing the protest." Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1992). 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. Metters Indus., Inc.--Request for Declaration of Entitlement to Costs, B-240301.5, Dec. 12, 1991, 91-2 CPD ¶ 535.

As noted above, two protests were filed by Sesc Halon Systems, B-247008, relating to solicitation No. F41691-Q-1531 (1531), and B-247009, relating to solicitation No. F41691-92-M-0048 (0048). Sesc Halon was concerned that

the awardee of the purchase orders under both solicitations improperly certified that it was a representative of the original equipment manufacturer as allegedly required by the solicitations. Shortly after the protests were filed, the agency stated that it would revise the specifications in solicitation No. 1531 (relating to protest B-247008) and rescind the requirement. However, the agency proposed no action in connection with solicitation No. 0048 (relating to protest B-247009) since the solicitation did not contain the certification requirement. The protester subsequently withdrew its protest concerning solicitation No. 0048.

Seso Halon's request for costs merely refers to solicitation No. 0048 and B-number B-247009, and requests reimbursement without stating why it believes that it is entitled to its costs. Since no corrective action on the part of the agency was necessary with regard to this protest and Seso Halon's request for costs refers only to the protest which was withdrawn, we deny the request for costs.

To the extent that Seso Halon may have intended to claim costs in connection with B-247008, relating to solicitation No. 1531, rather than with respect to solicitation No. 0048, B-247009, its request is also denied. As stated above, our Regulations do not contemplate reimbursement except in cases of undue delay in taking corrective action in the face of a clearly meritorious protest. 4 C.F.R. § 21.6(e). In this case, the Air Force stated that it would revise the specifications in the solicitation approximately 1 month after Seso Halon filed its protest with our Office. Assuming the protest under this solicitation was clearly meritorious, we consider the corrective action sufficiently prompt and deny the protester's claim for costs. R. J. Sanders, Inc., B-245358.2, Apr. 14, 1992, 92-1 CPD ¶ ____.


for James F. Hinchman
General Counsel