

J. Maeder



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

Decision

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

File: B-247806.2

Date: June 18, 1992

Andrew B. Golkow, Esq., Rees, Broome & Diaz, for the
protester.
Tracy Gruis, Esq., and John F. Herbert, III, Esq.,
Department of the Army, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, 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 took corrective action 3 weeks after the protest
was filed.

DECISION

Commercial Concrete, Inc. requests that our Office declare
the firm entitled to recover the reasonable costs of filing
and pursuing its protest concerning invitation for bids
(IFB) No. DACA 31-92-B-0036, issued by the U.S. Army Corps
of Engineers.

We deny the request.

Commercial's protest, filed March 6, 1992, challenged the
agency's rejection of Commercial's low bid as nonresponsive
for failure to properly execute the required Certificate of
Procurement Integrity. Because the certificate was executed
by the president of Commercial in printed letters rather
than cursive or script form, the agency rejected the bid
on the basis that Commercial's certificate lacked a
"signature," and awarded the contract to B&P Refuse
Disposal, Inc.

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By letter dated March 27, the Army acknowledged the validity of Commercial's contentions and informed the protester and our Office that it was terminating the contract to B&P Refuse and would award to Commercial, if otherwise appropriate. We subsequently dismissed the protest as academic.

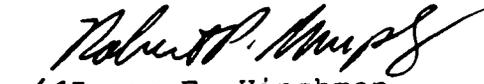
On April 7, Commercial filed a request with our Office under Section 21.6(e) of our revised Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1992), for a declaration of entitlement to the costs of filing and pursuing its protest. Commercial argues that it is entitled to costs because: The agency's finding of nonresponsiveness was totally without merit, as the relevant case law is clear that printing constitutes a signature; the decision to award costs "should be evaluated in light of the Government's policy to encourage participation of small business in federal procurement"; and, award of fees in this instance will not undermine "the general policy to encourage prompt reaction to meritorious protests. . . ."

Pursuant to our revised regulations, 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 the reasonable costs of filing and pursuing its protest. This regulatory provision is intended to allow the award of costs where agencies unduly delay taking corrective action in the face of a clearly meritorious protest, Propulsion Controls Eng'g--Request for Declaration of Entitlement to Costs, B-244619.2, Mar. 25, 1992, 92-1 CPD ¶ 306, thereby causing the protester to expend significant time and resources obtaining relief through the protest process. 55 Fed. Reg. 12836 (1990). Notwithstanding the protester's above-recited theories as to why it should be awarded costs here, 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. Laidlaw Envtl. Servs., Inc.--Request for Declaration of Entitlement to Costs, B-246668.2, Apr. 9, 1992, 92-1 CPD ¶ ____.

In this case, the record shows that the Army did not unduly delay taking corrective action. The Army initiated an investigation immediately after Commercial filed a protest in our Office. Three weeks later, based on the results of this investigation, the agency terminated its contract with the awardee, with the announced intent to award to Commercial. Such corrective action, taken early in the protest process, is precisely the kind of prompt reaction that our regulation is designed to encourage and provides no

basis for a determination that the payment of protest costs is warranted. See Leslie Controls, Inc.--Claim for Costs, B-243979.2, July 12, 1991, 91-2 CPD ¶ 50.

Accordingly, Commercial's request for declaration of entitlement to costs is denied.


for James F. Hinchman
General Counsel