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Comptroller General  
of the United States  
Washington, D.C. 20545

# Decision

**Matter of:** Essex Electro Engineers, Inc.--Entitlement  
to Costs

**File:** B-252483.2

**Date:** April 13, 1993

Michael Hatcher, Esq., Israel and Raley Chartered, for the  
protester.  
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

## DIGEST

A protester is not entitled to the costs of filing and  
pursuing its protest where the agency took corrective action  
as a result of the protest within 1 week after it was filed;  
alleged delay in agency-level processes occurring prior to  
the protest is not a basis for entitlement to costs under  
our Bid Protest Regulations.

## DECISION

Essex Electro Engineers, Inc. requests that our Office  
declare it entitled to recover the reasonable costs of  
filing and pursuing its protest concerning request for  
proposals (RFP) No. F41608-92-R-20313, which was issued by  
the Department of the Air Force for remote air lighting  
system equipment.

We deny the request.

Essex's protest involved the Air Force's alleged failure to  
send the firm certain aperture cards or drawings that were  
to be furnished with the solicitation. The protester stated  
that it had requested that the agency provide the cards and  
that the closing time for receipt of initial proposals be  
extended to allow sufficient time for the firm to prepare  
its proposal. Although Essex states that it made "several  
good faith attempts to secure the requested relief from the  
contracting officer," contacting the agency by letter and by  
phone between February 11 and February 25, it did not

receive a response from the agency. On February 25, it filed a protest with our Office. When it received the aperture cards by mail on March 3, it withdrew its protest.

Essex now asserts that it is entitled to its cost of filing and pursuing the protest, contending that it was only after the firm incurred the expense of filing a protest with our Office that the agency took the proper corrective action, and that the Air Force should therefore pay for those expenses.

Where a contracting agency decides to take corrective action in response to a protest, our Office may declare the protester to be entitled to recover reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.6(e) (1992). Here, Essex does not assert that the Air Force delayed taking corrective action once the protest was filed at our Office. Indeed, the agency took corrective action within 1 week of the date it received notice of the protest. Rather, Essex's arguments concern alleged delays that took place before it filed its protest with us.

The agency's alleged delay in responding to Essex's agency-level requests does not provide any basis on which we may declare entitlement to costs of filing a protest at our Office. Under the Competition in Contracting Act of 1984, our authority to declare entitlement to protest costs is limited to situations where protests to our Office support a finding that a procurement statute or regulation is violated. 31 U.S.C. § 3554(c)(1). The modification of our Bid Protest Regulations to provide for the possibility of an award of costs where an agency takes corrective action in response to a protest was not intended to ensure the fairness of agency-level processes occurring prior to the filing of a protest with our Office. That is the responsibility of the procuring agencies involved. See R.J. Sanders, Inc.--Claim for Costs, supra.

Accordingly, since the agency took prompt corrective action in response to Essex's protest to our Office, the request for a declaration of entitlement to costs is denied.

  
for James F. Hinchman  
General Counsel