

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

Decision

Matter of: Special Systems Services, Inc.--Entitlement
to Costs

File: B-252210.2

Date: June 8, 1993

Donald J. Flaherty for the protester.
Garrett L. Ressing, Esq., Department of the Navy, for the
agency.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protester is not entitled to reimbursement of the costs of
filing and pursuing protest under Section 21.6(e) of Bid
Protest Regulations where the agency took prompt corrective
action--25 working days after protest was filed.

DECISION

Special Systems Services, Inc. (SSS) requests that our
Office declare it entitled to recover the reasonable costs
of filing and pursuing its protest challenging the rejection
of its bid as nonresponsive under invitation for bids (IFB)
No. N68378-93-B-0605, issued by the Department of the Navy,
for furnishing and installing a base-wide radio fire alarm
system at the Naval Supply Center, Oakland, California.

We deny the request.

In its protest filed on February 4, 1993, SSS argued that
its bid was responsive and had been improperly rejected by
the Navy. As a result of the protest, the Navy determined
that it had improperly found the SSS bid nonresponsive and
began an inquiry into the bidder's responsibility. By
letter of March 12, the agency notified SSS and our Office
of this action. On March 16, we dismissed the SSS protest
as academic. Before the Navy determined the protester's
responsibility, the Department of Defense issued its
proposed base closure listings which identified the Naval
Supply Center, Oakland, as a candidate for closure. Based
on the potential for closure, on March 31, the Navy canceled
the procurement and withdrew the funds for it. In April,
the Navy terminated the existing contract with the King-
Fisher Company and notified SSS that the project would not

be advertised in the foreseeable future. Previously, on March 26, SSS had filed a claim for reimbursement of the costs of filing and pursuing its protest. Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1993).

Our Regulations provide that a protester may be entitled to reimbursement of its reasonable costs of filing and pursuing a protest where the contracting agency decides to take corrective action in response to a protest. 4 C.F.R. § 21.6(e). This does not mean that costs are due in every case in which an agency takes corrective action; rather, we will find an entitlement to costs only where an agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Network Software Assocs., Inc.--Request for Declaration of Entitlement to Costs, B-250030.4, Jan. 15, 1993, 93-1 CPD ¶ 46.

In this case, the agency notified our Office of its intention to take corrective action on March 12, 25 working days after the protest was filed. Such corrective action, taken early in the protest process, is precisely the kind of prompt reaction to a protest that our Regulations are designed to encourage. Cantu Servs., Inc.--Request for Declaration of Entitlement to Costs, B-250592.2, Feb. 23, 1993, 93-1 CPD ¶ 164. It provides no basis for a determination that the payment of protest costs is warranted. Further, we find that the purpose of Section 21.6(e)--to encourage agencies to take corrective action in response to meritorious protests before protesters have expended additional unnecessary time and resources pursuing their claims--was served here. See, e.g., Anderson Columbia Co., Inc., B-250530, Nov. 24, 1992, 92-2 CPD ¶ 377. In this regard, SSS has not shown that the 5 weeks between its protest and the agency's corrective action caused it to expend time and resources that it would not have expended had the agency taken corrective action earlier in the process. See Propulsion Controls Eng'g--Request for Declaration of Entitlement to Costs, B-244619.2, Mar. 25, 1992, 92-1 CPD ¶ 306. Accordingly, we find the award of costs to be inappropriate in this case.

The request for a declaration of entitlement to costs is denied.


for James F. Hinchman
General Counsel