



Comptroller General
of the United States

1250242

Washington, D.C. 20543

Decision

Matter of: Boaz Towing, Inc.--Entitlement to Costs

File: B-257883.2

Date: February 22, 1995

D. Lee Roberts, Jr., Esq., Smith, Currie & Hancock, for the protester.
Jacqueline Maeder, Esq., and John Van Schaik, 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 reasonably prompt corrective action.

DECISION

Boaz Towing, Inc. requests that our Office declare it entitled to recover the reasonable costs of filing and pursuing its protest.

On July 13, 1994, Boaz protested the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DACW29-94-B-0067, issued by the Department of the Army, Army Corps of Engineers, New Orleans District. On August 22, in lieu of filing a report on the protest, the Army asked that our Office dismiss the protest since it was reexamining its nonresponsiveness determination. On August 30, the Army informed our Office that it had determined that Boaz's bid should have been accepted and that the agency was terminating the original award and awarding the contract to Boaz. In light of these actions, our Office dismissed the protest as academic on September 8. Boaz now requests that we find it entitled to the costs of filing and pursuing its protest.

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. Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1994). We will find a protester so entitled, however, only where the agency unduly delayed 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, the agency has taken reasonably prompt corrective action. Id.

There is no basis to conclude that Boaz is entitled to recover its protest costs, even if we assume that Boaz's protest was clearly meritorious. Specifically, we conclude that the initiation of corrective action on August 22, approximately the time that the Army's report was due, and the finalization of the corrective action on August 30, did not constitute undue delay. See CSL Birmingham Assocs.; IRS Partners-Birmingham--Entitlement to Costs, B-251931.4; B-251931.5, Aug. 29, 1994, 94-2 CPD ¶ 82. Further, 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 55 Fed. Reg. 12,838 (1990). In this regard, Boaz has not shown that the agency's delay caused it to expend time and resources that it would not have expended had the agency taken corrective action earlier in the process. Indeed, the agency never filed a report on the protest to which Boaz was required to respond, and there is no indication in the record that Boaz took any other action in pursuit of its protest between the time it filed the protest and the time it learned of the agency's corrective action.

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

Ronald Berger
 for Robert P. Murphy
 General Counsel