

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-220666.3 **DATE:** April 23, 1986
MATTER OF: Monarch Painting Corporation

DIGEST:

There is no basis for payment to protester of costs of filing and pursuing protests, including attorney's fees, where the first two protests were voluntarily withdrawn by the protester and the final protest is dismissed as academic.

On December 13, 1985, Monarch Painting Corporation (Monarch) filed a protest with our Office concerning invitation for bids (IFB) No. DAKF70-85-B-0116, issued by the Department of the Army for painting of the interiors of family housing units at Forts Richardson, Wainwright, and Greely in Alaska. In its protest, Monarch contended that the solicitation's requirements were defective because they were ambiguous as to the "square footage" of the areas which were required to be painted.

By amendment No. 0009 dated January 7, 1986, the Army amended the solicitation's requirements to correct this deficiency, and Monarch "concur[s]" with the agency's view that, as a result of the issuance of amendment No. 0009, no ambiguities remain in the solicitation which would mislead bidders. Since the ambiguity has been corrected as requested by the protester, the protest is dismissed as academic. Halifax Engineering, Inc., B-219178, July 22, 1985, 85-2 C.P.D. ¶ 68.

Monarch has also requested payment of the reasonable costs of filing and pursuing the protest, including attorney's fees. Notwithstanding its agreement with the agency that it has corrected the problem which prompted the protest, Monarch continues to prosecute its claim for protest costs. Monarch asserts that as a result of this protest and two prior protests of this solicitation this procurement now affords the opportunity for free and open competition. The two prior protests were withdrawn by Monarch as a result of amendments to the solicitation which met Monarch's demands for corrective action. Monarch asserts that in view of its efforts, which have advanced the interests of the government and of competitive procurement, it should not have to bear

alone the costs of its protests. Thus, Monarch requests that our Office find that it is entitled to the costs of filing and pursuing one or more of its several protests, including attorney's fees.

The authority to award a protester or other interested party attorney's fees is provided by the Competition in Contracting Act of 1984 (CICA). CICA provides in pertinent part as follows:

"If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may declare an appropriate interested party to be entitled to the costs of

"(A) filing and pursuing the protest,
including reasonable attorneys' fees"

31 U.S.C.A. -§ 3554(c)(1) (West Supp. 1985).

Our Bid Protest Regulations implement the above statutory authority at 4 C.F.R. § 21.6(d) (1985) which provides that:

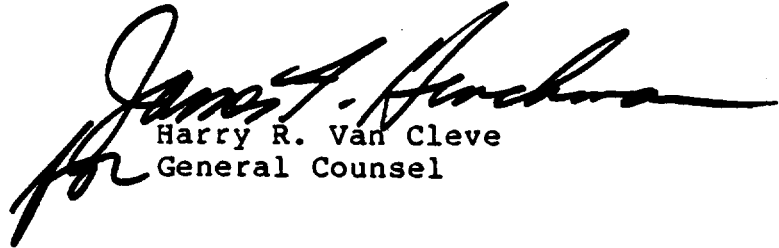
"If the General Accounting Office determines that a solicitation, proposed award, or award does not comply with statute or regulation it may declare the protester to be entitled to reasonable costs of:

"(1) Filing and pursuing the protest,
including attorney's fees"

Under the above statutory authority and the implementing regulation at 4 C.F.R. § 21.6(d), entitlement to payment of the reasonable costs of pursuing a protest, including attorney's fees, is expressly predicated upon a determination by this Office that a solicitation, proposed award, or award does not comply with a statute or regulation. See Pitney Bowes, Inc., 64 Comp. Gen. 623 (1985) 85-1 C.P.D. ¶ 696. Our Office has not made such a determination since, as set forth above, the first two protests submitted by Monarch were voluntarily withdrawn and the present protest is dismissed as academic. Since this Office has not determined that the solicitation in question does not comply with a statute or

regulation, there is no basis upon which we may declare Monarch to be entitled to the costs which are claimed.

The protest is dismissed and the claim denied.


for Harry R. Van Cleve
General Counsel