

Ruppert



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bolar Pharmaceutical Company, Inc.

File: B-234671.2

Date: June 13, 1989

DIGEST

Protester is not entitled to reimbursement of protest costs, including attorneys' fees, where protest is withdrawn because agency took action to satisfy the protester's complaint and thus no decision on the merits of the protest is issued.

DECISION

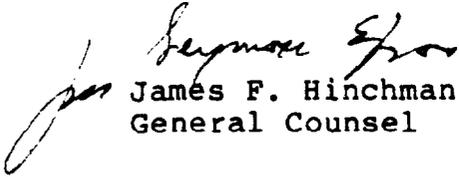
Bolar Pharmaceutical Company, Inc., seeks recovery of the costs incurred in pursuing its protest, including attorneys' fees, concerning request for proposals (RFP) No. M5-Q98-89, issued by the Department of Veterans Affairs (VA) for pharmaceuticals. In its protest, filed on March 21, 1989, Bolar contended that certain shelf-life requirements in the RFP were unduly restrictive of competition. By letter of April 10, 1989, however, the protester advised us that the VA had issued three amendments to the RFP which effectively remedied the alleged restrictiveness by relaxing the specifications. Therefore, the protester withdrew its protest on the merits since the contract relief granted rendered the protest academic.

Bolar now requests reimbursement of the costs it incurred in pursuing its protest, including attorneys' fees. Bolar states that since the VA clearly violated the full and open competition requirement of the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(a) (Supp. IV 1986), by issuing restrictive specifications, and Bolar successfully protested those restrictions, it should be entitled to recover the costs of pursuing this protest, including attorneys' fees. Bolar cites our decision in Washington National Arena Limited Partnership, 65 Comp. Gen. 25 (1985), 85-2 CPD ¶ 435, as precedent for awarding protest costs where, as here, the agency's actions had the effect of precluding the protester from competing.

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While we have found protesters entitled to recovery of protest costs where we issue a decision holding that an agency-improperly restricted competition or otherwise acted improperly, we generally do not allow recovery of protest costs where, as here, a protest is withdrawn after the agency takes corrective action and we do not issue a decision on the merits of the case. See, e.g., Storage Technology Corp., B-235308, May 23, 1989, 89-1 CPD ____; Teknion, Inc.--Claim for Protest Costs, 67 Comp. Gen. 607 (1988), 88-2 CPD ¶ 213. Therefore, since we did not issue a decision on the merits, Bolar is not entitled to reimbursement of its protest costs.

The claim is denied.


James F. Hinchman
General Counsel