



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Leslie Controls, Inc.--Claim for Costs

**File:** B-243979.2

**Date:** July 12, 1991

Jack P. Janetatos, Esq., Baker & McKenzie, for the protester. Glenn G. Wolcott, Esq., and Paul I. Lieberman, 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 amended the solicitation in less than 1 month after the protest was filed.

### DECISION

Leslie Controls, Inc. requests that our Office declare it entitled to recover the reasonable costs of filing and pursuing its protest. On May 10, 1991, Leslie protested the terms of request for proposals (RFP) No. N00189-91-R-0088, issued by the Department of the Navy. On June 3, 1991, the Navy issued an amendment to the RFP responding to Leslie's protest objections. Thereupon, Leslie withdrew its protest.

On June 13, the protester filed a claim with our Office under section 21.6(e) of our revised Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991), (to be codified at 4 C.F.R. § 21.6(e)), for the costs of filing and pursuing its protest. Pursuant to the revised regulations, if the contracting agency decides to take corrective action in response to a protest, we may declare the protester to be entitled to recover reasonable costs of filing and pursuing its protest, including attorneys' fees.

Prior to revision of the regulations, we did not award costs in cases where an agency took corrective action prior to our issuing a decision on the merits of the protest. We became concerned, however, that some agencies were taking longer than necessary to initiate corrective action in the face of meritorious protests, thereby causing protesters to expend unnecessary time and resources to make further use of the

protest process in order to obtain relief. We believed that providing for the award of costs in cases where the agencies delayed taking corrective action would encourage agencies "to recognize and respond to meritorious protests early in the protest process." 55 Fed. Reg. 12834, 12836 (1990).

As initially proposed, section 21.6(e) would have provided for the award of costs in cases where the agency notified us of a decision to take corrective action after the due date for submission of the agency report on the protest. 55 Fed. Reg. 12838. As adopted, section 21.6(e) provides for the possible award of costs without regard to the report due date. We stated in the explanatory material accompanying the promulgation of the final regulations that deciding whether to award costs was more appropriately based on the circumstances of each case, including when in the protest process the decision to take corrective action was made and communicated to us and the protester, rather than on the report due date. We noted in this respect that there may be circumstances where the award of costs, even where corrective action was taken after submission of the report, would not be justified, just as there may be circumstances where the award of costs would be appropriate even where corrective action was taken prior to report submission. See 56 Fed. Reg. 3,759 et seq.

Obviously, it was not our intention in adopting the revised provision to award protest costs in every case in which the agency takes corrective action in response to a protest. Since our concern was that some agencies were not taking corrective action in a reasonably prompt fashion, our intent is to award costs where, based on the circumstances of the case, we find that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Here, the agency took corrective action less than 1 month after the protest was filed. Such action, taken early in the protest process, is precisely the kind of prompt reaction to a protest that our regulation is designed to encourage. It provides no basis for a determination that the payment of protest costs is warranted. Accordingly, Leslie's claim for costs is denied. See Oklahoma Indian Corp.--Claim for Costs, B-243785.2, June 10, 1991, 91-1 CPD ¶ 558.

  
for James F. Hinchman  
General Counsel