



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Daniels Manufacturing Corporation--
Request for Declaration of Entitlement to
Costs

File: B-244952.2

Date: March 10, 1992

Michael A. Hordell, Esq., Petrillo & Hordell, for the
protester.

Kim Lantz Yoder, Esq., Department of the Navy, for the
agency.

Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protester is not entitled to the costs of filing and
pursuing its protest where, in response to protest which
challenged a specification, the agency proposed to modify
the specification within 3 weeks of the protest being filed,
and where upon consideration of continuing objections
expressed by the protester, the agency then presented a
draft amendment to the specification, acceptable to the
protester, with its timely agency report filed 2 weeks
later.

DECISION

Daniels Manufacturing Corporation requests that our Office
declare it entitled to recover its costs of filing and
pursuing a protest. On July 26, 1991, Daniels protested
several of the specification provisions contained in request
for proposals (RFP) No. N00104-91-R-CC61, issued by the
Department of the Navy for electrical tool kits
(B-244952.1).

On August 16, 3 weeks after the protest was filed, the Navy
wrote Daniels and provided a "brief summary" of its proposed
changes to the specifications. In its August 16 letter, the
Navy invited Daniels to express its further suggestions or
concerns and informed the protester that the closing date of
the solicitation would be extended in a forthcoming
amendment including the specification changes. This
information was reported to our Office by the agency on
August 19 in a request for summary dismissal of Daniels'
protest.

On August 23, Daniels responded to the request for summary dismissal stating that the description of the proposed changes to the specifications provided by the Navy was incomplete and otherwise did not satisfy all of the issues raised by its protest. On August 27, the Navy responded to Daniels concerns by clarifying its August 16 letter concerning one aspect of the specifications and in taking issue with a number of Daniels' continuing objections to the proposed changes.

The Navy then filed its agency report on Daniels' protest on the August 30 due date established by section 21.3(c) of our Bid Protest Regulations. See 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(c)). In that report, the agency included a detailed "draft work-in-progress of proposed specification changes" which was subsequently reviewed by the protester and which formed the basis of that firm's withdrawal of its protest on September 11.

In its letter of withdrawal, Daniels requested that we declare it entitled to recover its costs of filing and pursuing the protest. In support of its claim, the protester maintains that the 35 calendar days from the filing of its protest until presentation of an acceptable draft amendment to the specifications constituted undue delay on the agency's part in taking corrective action in the face of a clearly meritorious procurement. The protester further claims that this delay was indicative of the manner in which it had been unfairly treated by the Navy on past tool kit procurements dating back to 1989.

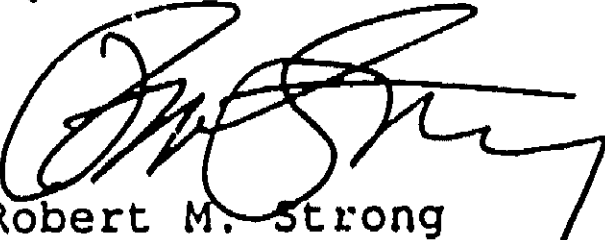
In response to Daniels' claim for costs, the Navy states that, since it communicated its position regarding proposed changes to the specifications to Daniels' counsel within 3 weeks after the protest was filed, no undue delay occurred, and the agency argues that, therefore, the protester is not entitled to protest costs. Regarding Daniels' use of alleged unfair treatment on previous procurements as support for its claim, the Navy has detailed the history of tool kit procurements since 1989 and maintains that its actions were all legally appropriate. In its final comments in this matter, Daniels does not dispute the Navy's account of the procurement history.

Section 21.6(e) of our Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(e)), permits us to award protest costs when, before we issue a decision, an agency takes corrective action in response to a protest. In adopting this provision, it was not our intent to award protest costs in every case in which corrective action was taken in response to a protest. Our concern was that some agencies were not taking corrective action in a reasonably prompt fashion so as to preclude protesters from needlessly

expending resources in continuing to pursue protests; thus, the principal intent of the provision is to award costs where, based on the circumstances of the case, we find that an agency unconvincingly delayed in taking corrective action in the face of a clearly meritorious protest. Pulse Elecs., Inc.--Request for Declaration of Entitlement to Costs, B-243625.3, Aug. 30, 1991, 91-2 CPD ¶ 222.

Here, the Navy initiated a corrective action process by communicating its intention to change the specifications in response to Daniels' protest within 3 weeks after it was filed and by inviting the protester to comment directly on a proposed summary of specification changes. An examination of that summary discloses that, while not completely responsive to all of Daniels' initial concerns, it did address the firm's principal objections to the specifications. Within 2 weeks after receiving Daniels' continuing objections, the Navy then took "final" corrective action in the form of a draft revision to the specifications, which was transmitted concurrently with its timely agency report and which satisfied all of the firm's concerns and prompted a withdrawal of the protest. Such action, initiated early in the protest process and concluded quickly after considering a protester's continuing objections, is precisely the kind of prompt reaction that our regulation is designed to encourage. See Pulse Elecs., Inc.--Request for Declaration of Entitlement to Costs, supra. It, thus, provides no basis for a determination that the payment of protest costs is warranted. See Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558.

The request for entitlement to protest costs is denied.


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