



Comptroller General  
of the United States  
Washington, D.O. 20548

## Decision

**Matter of:** Purdy Corporation--Claim for Costs

**File:** B-249067.2

**Date:** August 13, 1992

J. Michael Slocum, Esq., Slocum, Boddie, Murry & Kirk, P.C., for the protester, Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

A protester is not entitled to the costs of filing and pursuing its protest where the agency took corrective action as a result of the protest within 10 days after it was filed; alleged delay in agency-level processes occurring prior to the protest is not a basis for entitlement to costs under Bid Protest Regulations.

### DECISION

Purdy Corporation requests that our Office declare it entitled to recover the reasonable costs of filing and pursuing its protest of solicitation No. N00383-92-X-1481 issued by the Department of the Navy, Naval Aviation Supply Office, for swashplate assemblies.

We deny the request.

On December 20, 1991, Purdy submitted an offer in response to the solicitation to acquire swashplates from approved sources. On June 9, 1992, Purdy received notice from the Navy that its offer was rejected because Purdy was not an approved source. Purdy had not been denied classification as an approved source; rather, the Navy had not finished its review of Purdy's request for approval. The Navy awarded the contract to Sikorsky Aircraft approximately 2 weeks before Purdy received notice that the Navy had rejected its offer. Purdy protested the contract award with our Office on June 16.

Previously, on April 16, 1986, Purdy had submitted a data package for its swashplate assembly to the Navy for review and source approval. Purdy claims that its experience with the Navy has involved numerous instances of inordinate

delays in the source approval of its swashplate assembly, as well as for other parts. In a 1987 settlement agreement to a court suit filed by Purdy, the Navy agreed to take prompt source approval action. During the 6-year period from Purdy's submission for source approval to its filing the protest, Purdy asserts that it responded to numerous requests from the Navy for additional information for this part, but the Navy never made a source approval decision.

On June 26, 1992, the Navy informed our Office that, subsequent to Purdy's protest, Purdy had been approved as a source for swashplate assemblies and the contract award to Sikorsky had been terminated to allow Purdy to compete on the procurement. We dismissed Purdy's protest as academic on June 29.

Purdy now asserts that it is entitled to its cost of filing and pursuing the protest because the Navy had unduly delayed making a source approval decision and only took action as a result of Purdy's protest.

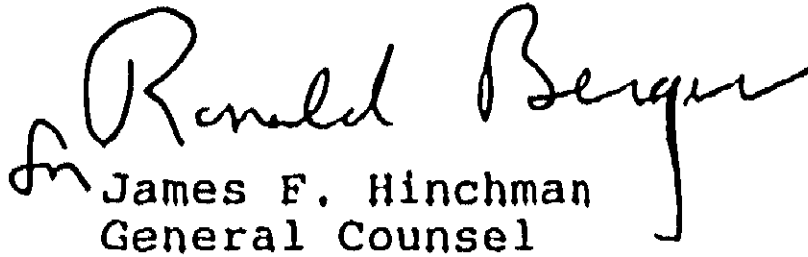
Where a contracting agency decides to take corrective action in response to a protest, our Office may declare the protester to be entitled to recover reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.6(e) (1992). Prior to adoption of this regulatory provision, 56 Fed. Reg. 3759 (1991), we were concerned that some agencies were taking longer than necessary to initiate corrective action in the face of clearly meritorious protests, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. See R.J. Sanders, Inc.--Claim for Costs, B-245388.2, Apr. 14, 1992, 92-1 CPD ¶ 362. We thought that providing for the award of costs in cases where agencies delayed taking corrective action after the protest was filed at our Office would encourage agencies to recognize and respond to meritorious protests early in the protest process. Id.; see 55 Fed. Reg. 12,834 (1990).

Here, Purdy does not assert that the Navy delayed taking corrective action once the protest was filed at our Office. Indeed, the Navy took corrective action within 10 days of the protest date. Rather, Purdy asserts that the agency delay that supports its claim for entitlement to protest costs occurred because of the passage of years prior to its protest during the Navy's extended source approval process.

The asserted delay is not a basis on which we may declare entitlement to costs of filing a protest at our Office. Under the Competition in Contracting Act of 1984, our authority to declare entitlement to protest costs is limited to situations where protests to our Office support a finding that a procurement statute or regulation was violated.

31 U.S.C. § 3554(c)(1) - The modification of our Bid Protest Regulations to provide for the possibility of an award of costs where an agency takes corrective action in response to a protest was not intended to ensure the fairness of agency-level processes occurring prior to the filing of a protest with our Office. See R.J. Sanders, Inc.--Claim for Costs, supra.

The request for entitlement to a declaration of costs is denied.

  
James F. Hinchman  
General Counsel