



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cantu Services, Inc.--Request for Declaration
of Entitlement to Costs

File: B-250592.2

Date: February 23, 1993

Ricardo M. Cantu for the protester,
Robert Walsh, Esq., Department of Energy, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protester is not entitled to recover the costs of filing and pursuing its protest where, in response to the protest, the agency terminated the awardee's contract 15 working days after the protest was filed, and plans to recompute the requirement.
2. General Accounting Office Bid Protest Regulations do not provide for recovery of proposal preparation costs in cases where the agency takes corrective action.

DECISION

Cantu Services, Inc. requests that our Office declare it entitled to recover the reasonable costs of filing and pursuing its protest challenging the award of a contract to Guckenheimer Enterprises, Inc. under request for quotations (RFQ) No. 37-4212, issued by the Sandia National Laboratory on behalf of the Department of the Energy. The protester argued that the agency failed to afford it meaningful discussions.

The protest was filed on September 29, 1992. In response to the protest, the agency immediately began an investigation and, on October 19, terminated the awardee's contract for the convenience of the government, and stated that it would resolicit the requirement. Thereupon, we dismissed the protest because the agency's action rendered the protest

academic. On November 3, Cantu requested that our Office declare it entitled to recover the costs of filing and pursuing its protest.


Where the contracting agency takes corrective action prior to our issuing a decision on the merits of a protest, we may declare the protester to be entitled to recover the reasonable costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1992). As we have stated, see, e.g., Leslie Controls, Inc.--Claim for Costs, B-243979.2, July 12, 1991, 91-2 CPD ¶ 50, it is not our intention to award protest costs in every case in which the agency takes corrective action in response to a protest. Our concern was that some agencies were not taking corrective action in a reasonably prompt fashion, and we believed that providing for the award of costs in cases where the agency delayed taking corrective action would encourage agencies "to recognize and respond to meritorious protests early in the protest process." 55 Fed. Reg. 12834 (1990). Consequently, 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. Instrumentation Laboratory Co.--Request for Declaration of Entitlement to Costs, B-246819.2, June 15, 1992, 92-1 CPD ¶ 517.

In this case, the agency terminated the awardee's contract for the convenience of the government 15 working days after the protest was filed. Such corrective action, taken early in the protest process, is precisely the kind of prompt reaction to a protest that our regulation is designed to encourage. Id. We consider this corrective action sufficiently prompt to warrant denial of the protester's claim for costs. R.J. Sanders, Inc.--Claim for Costs, B-245388.2, Apr. 14, 1992, 92-1 CPD ¶ 362.

To the extent that Cantu also contends that it should be reimbursed for its proposal preparation costs, our Bid Protest Regulations do not provide for the recovery of such costs in cases where the agency takes corrective action.

4 C.F.R. § 21.6(e); Moon Eng'g Co., Inc.--Request for Declaration of Entitlement to Costs, B-247053.6, Aug. 27, 1992, 92-2 CPD ¶ 129.¹

Accordingly, Cantu's request for declaration of entitlement to costs is denied.


for James F. Hinchman
General Counsel

¹In this regard, Cantu also complains that it should be reimbursed because the corrective action taken was insufficient to redress its grievance. Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Oshkosh Truck Corp.; Idaho Norland Corp., B-237058.2; B-237058.3, Feb. 14, 1990, 90-1 CPD ¶ 274. Cantu's argument is essentially that it should recover its costs because it expended substantial money and effort to prepare its proposal, and that the agency unreasonably denied Cantu's requests to conduct discussions. Neither assertion provides a basis to question the reasonableness of the corrective action being taken by the agency.