



Comptroller General  
of the United States

Washington, D.C. 20548

148716

## Decision

**Matter of:** PLX, Inc.--Request for Declaration of  
Entitlement to Costs

**File:** B-251575.2

**Date:** March 10, 1993

Jack Lipkins for the protester.  
Catherine M. Evans, Esq., and John M. Melody, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

1. Agency took prompt corrective action in response to protest challenging solicitation requirements, and protester therefore is not entitled to reimbursement of its costs of filing and pursuing its protest, where agency initiated an investigation of protest allegations, determined that an in-depth review of the specifications was necessary, and canceled solicitation by the agency report due date.
2. In determining whether agency took prompt corrective action in response to protest, General Accounting Office (GAO) measures promptness from the time the protest was filed at GAO, not from the time the protester first raised the matter at the agency level.

### DECISION

PLX, Inc. requests that we find it entitled to reimbursement of its bid preparation costs and protest costs under invitation for bids (IFB) No. DAAA09-92-B-0601, issued by the U.S. Army Armament, Munitions and Chemical Command (AMCCOM) for retroreflectors. The retroreflector is an optical device which is a part of the M1A1 and M1A2 Abrams Main Battle Tank. PLX argues it is entitled to reimbursement of its costs because the Army unduly delayed in taking corrective action in response to PLX's concerns about the solicitation.

We deny the request.

On December 8, 1992, PLX filed a protest in our Office, alleging that the IFB's technical data package (TDP) was incomplete and ambiguous. After learning of the protest, AMCCOM began reviewing the TDP in light of PLX's allegations. Subsequently, AMCCOM determined that the

25 working days allowed by our Bid Protest Regulations for filing a response to the protest was insufficient to permit a complete review of the TDP. Shortly before the January 15, 1993, due date for the agency report, AMCCOM representatives informed the protester that it would seek an extension of the report due date in order to complete its review. On January 15, the Army informed our Office that it was canceling the IFB until it could determine whether changes to the TDP were necessary. PLX objected to the cancellation, essentially arguing that AMCCOM had already had time to review the matter and therefore should have been required to submit a report to our Office in accordance with our Regulations. On January 27, we dismissed the protest, finding that the cancellation rendered the protest academic notwithstanding PLX's objection. On February 10, PLX filed a request with our Office for a declaration of entitlement to the costs of filing and pursuing the protest. PLX alleges that it is entitled to its protest costs because the Army did not act promptly in responding to the protest.

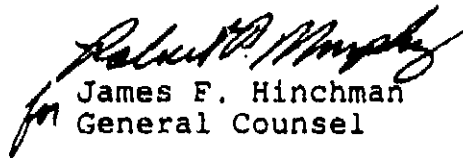
Under our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1992), we may declare a protester entitled to the costs of filing and pursuing its protest where the agency takes corrective action in response to its protest. We will find such an entitlement only where, based on the circumstances of the case, we find that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Building Servs. Unltd.--Request for Declaration of Entitlement to Costs, B-244135.2, Oct. 7, 1991, 91-2 CPD ¶ 312.

Even assuming that the cancellation of the RFP here constituted corrective action in the face of a clearly meritorious protest, it is clear that the agency took this action promptly. In this regard, the record shows that on December 29 the contracting officer requested two of AMCCOM's technical offices to review the TDP and to provide their responses by January 8. Meanwhile, the contracting officer issued an IFB amendment extending the bid opening date from January 5 to February 5. Although the contracting officer's technical advisors ultimately determined that the TDP was acceptable to meet the agency's needs, the contracting officer felt that this response did not adequately address PLX's protest allegations, and that a more thorough review was necessary. Although the contracting officer apparently considered obtaining an extension on the report due date in order to complete the review of the TDP, he ultimately determined that a thorough review would take longer than an extension of the report due date would allow. Based on this conclusion, the contracting officer promptly canceled the solicitation on the report due date, January 15. Under these circumstances, we conclude

that the agency took prompt corrective action. See Propulsion Controls and Eng'g--Request for Declaration of Entitlement to Costs, B-244619.2, Mar. 25, 1992, 92-1 CPD ¶ 306.

PLX argues that the promptness of the corrective action should be measured from the time PLX first brought the allegedly defective TDP to the agency's attention in October 1992. We disagree. The provision in our Regulations providing for the possibility of an award of protest costs where an agency takes corrective action in response to a protest with our Office is intended to ensure fair treatment of protesters who make substantial investments of time and resources to pursue clearly meritorious protests in this forum, but who do not have the opportunity to recoup their costs because of agency corrective actions. R.J. Sanders, Inc.--Claim for Costs, B-245388.2, Apr. 14, 1992, 92-1 CPD ¶ 362. It is not intended to ensure the fairness of agency-level processes occurring prior to the filing of a protest with our Office. Id.; Purdy Corp.--Claim for Costs, B-249067.2, Aug. 13, 1992, 92-2 CPD ¶ 105.

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

  
for James F. Hinchman  
General Counsel