



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Diez Management Systems, Inc.--Entitlement to Costs

**File:** B-250831.3

**Date:** April 13, 1993

Edward J. Tolchin, Esq., Fettmann & Tolchin, for the protester.  
Robert Sonenthal, Esq., Agency for International Development, for the agency.  
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protester is not entitled to reimbursement of the costs of filing and pursuing protest under section 21.6(e) of Bid Protest Regulations based on agency corrective action, where corrective action was prompt--within 10 calendar days after protest was filed.

### DECISION

Diez Management Systems, Inc. requests that our Office declare it entitled to recover the costs of filing and pursuing its protest challenging the award of a contract to The Centech Group, Inc. under Agency for International Development (AID) request for proposals (RFP) No. OP/A/FAP-92-0001, for management of a printing and duplicating facility.

We deny the request.

The protest was filed on October 9, 1992. Diez argued that its proposal had been improperly downgraded based on reasons inconsistent with the RFP. As a result of the protest, AID discovered a possible defect in the technical evaluation of proposals, specifically that the score sheets used by the technical evaluation committee (TEC) did not accurately reflect the subfactor evaluation scheme set forth in the RFP. Therefore, the agency determined that corrective action was appropriate. On October 19, the contracting officer instructed the TEC chairman to reevaluate technical proposals. By letter of October 23, the agency notified Diez of this action. The reevaluation was completed on October 30 and on November 17 contracting officials

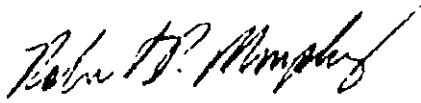
determined that there would be no change in award, issuing a written decision to that effect on November 19. On November 17, the agency filed its report with our Office, in which it detailed the reevaluation and results. On December 7, 1992, Diez withdrew its protest based on the corrective action taken by the agency and filed a claim for reimbursement of the costs of filing and pursuing its protest, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1993). The agency maintains that costs are inappropriate in this case because it took prompt corrective action.

Our Regulations provide that a protester may be entitled to reimbursement of its costs of filing and pursuing a protest where the contracting agency decides to take corrective action in response to a protest. 4 C.F.R. § 21.6(e). This does not mean that costs are due in every case in which an agency takes corrective action; rather, we will find an entitlement to costs only where an agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Network Software Assocs., Inc.--Request for Declaration of Entitlement to Costs, B-250030.4, Jan. 15, 1993, 93-1 CPD ¶ 46.

In this case, the agency began corrective action 10 calendar days after the protest was filed, and notified the protester in writing of its action 14 calendar days after the filing. Such corrective action, taken early in the protest process, is precisely the kind of prompt reaction to a protest that our Regulations are designed to encourage. Cantu Servs., Inc.--Request for Declaration of Entitlement to Costs, B-250592.2, Feb. 23, 1993, 93-1 CPD ¶ \_\_\_\_\_. The agency's speed in responding to the protest is easily within parameters we have established as to what we will consider "prompt" action. See, e.g., Anderson Columbia Co., Inc., B-250530, Nov. 24, 1992, 92-2 CPD ¶ 377 (notification of intention to take corrective action in agency report, 25 working days after filing, is sufficiently prompt to deny claim for costs); ProServe Corp.--Protest and Request for Declaration of Entitlement to Protest Costs, B-247948.2; B-247948.3, Oct. 5, 1992, 92-2 CPD ¶ 225 (communication of intent to take corrective action approximately 1 month after filing of a protest constitutes prompt action).

Accordingly, we find the award of costs to be inappropriate in this case.

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

  
for James F. Hinchman  
General Counsel