



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

## Decision

**Matter of:** Loral Fairchild Corporation--Entitlement to  
Costs

**File:** B-251209.2

**Date:** May 12, 1993

Ronald K. Henry, Esq., Baker & Botts, for the protester.  
Gregory H. Petkoff, Esq., Department of the Air Force, for  
the agency.  
Mary G. Curcio, Esq., and John G. Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

1. Protester is not entitled to the costs of filing and pursuing its protest where agency decision to cancel solicitation, based on excessive delays in the procurement, is not corrective action that was taken in response to a clearly meritorious protest.
2. Even if agency action is considered corrective action, General Accounting Office Bid Protest Regulations do not provide for the award of proposal preparation costs in cases where agency takes corrective action.

### DECISION

Loral Fairchild Corporation requests that our Office declare it entitled to recover the costs associated with filing and pursuing its protest against the specifications contained in request for proposals (RFP) No. F09603-92-R-0034, issued by the Department of the Air Force for a video system for the F-15 aircraft. Loral also requests that we find it entitled to recover the costs it incurred in submitting a proposal in response to the RFP.

We deny the request.

On November 3, 1992, Loral filed a protest with our Office in which it asserted that the RFP did not accurately reflect the Air Force's minimum needs in that it either understated or failed to include requirements in 21 instances, was unduly restrictive of competition, and improperly failed to provide for the consideration of life-cycle costs in the price evaluation. Loral also alleged that the Air Force was biased toward certain Japanese equipment.

On November 19, the Air Force informed our Office that it was canceling the solicitation. The agency explained that its attempts to award the requirement for approximately 2 1/2 years had been frustrated by the filing of nine protests. The agency stated that during that time period, it developed the in-house capability to meet its requirements. The Air Force additionally reported that the system that was solicited under the RFP was scheduled for upgrade within 5 years based on the agency's original plans for a 1990 award. As a result, the Air Force concluded that by the time the contract would be awarded, it would be just about time to upgrade the system. The Air Force therefore concluded that it would cancel the RFP and not reissue it.

On November 23, our Office dismissed Loral's protest as academic based on the cancellation of the RFP. On December 15, Loral requested that we declare the firm entitled to recover its protest and proposal preparation costs.

Our Bid Protest 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) (1993). This provision is intended to allow the award of protest costs where we find that the agency unduly delayed taking corrective action in response to a clearly meritorious protest. Tri-Ex Tower Corp., B-245877, Jan. 22, 1992, 92-1 CPD ¶ 100.

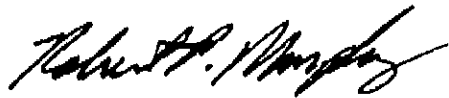
Here, the Air Force says that it did not take corrective action because it concluded that any of Loral's protest arguments had merit. Rather, according to the agency, it chose to cancel the RFP because, due to the delays in the procurement brought about by several protests, it could now perform the work in house and because the equipment solicited was scheduled for updating soon after the award would be made. Loral, on the other hand, asserts that the cancellation must have been in response to Loral's protest since the Air Force was aware at the time it issued the solicitation that it had the in-house capability to meet its needs for the video system.

It is true that the Air Force was aware of its in-house capability when the solicitation was issued. Nevertheless, the record shows that the cancellation was precipitated by the probable impact of the delay which would likely result from the processing of Loral's protest. Under the circumstances, since the cancellation was based upon the agency's assessment of the impact of the delay associated with the protest rather than upon the merits of the protest arguments, we do not think that the cancellation constitutes corrective action in response to a clearly meritorious

protest so that the protester is entitled to its protest costs. See Datavault Corp.--Entitlement to Costs, B-245991.3, May 29, 1992, 92-1 CPD ¶ 476.

As for Loral's request for proposal preparation costs, even if the Air Force had taken corrective action in response to Loral's request, our Bid Protest Regulations do not allow for the reimbursement of proposal preparation where an agency takes corrective action. See Moon Eng'g Co., Inc.--Request for Declaration of Entitlement to Costs, B-247053.6, Aug. 27, 1992, 92-2 CPD ¶ 129.

The request is denied.

  
for James F. Hinchman  
General Counsel