



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dayton-Granger, Inc.--Reconsideration

File: B-246226.2

Date: February 28, 1992

Richard A. Ciambrone, Esq., Thompson, Hine and Flory, for the protester.

John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration of a decision dismissing a protest as academic, based on agency corrective action of reevaluating a proposal that had been improperly rejected, is denied, where the request rests only on the protester's anticipation that the agency may act improperly.

2. Protester is not entitled to award of costs of filing and pursuing its protest, where the contracting agency promptly acted upon the protest, which alleged that the proposal was improperly rejected, by requesting that the proposal be resubmitted for evaluation.

DECISION

Dayton-Granger, Inc. requests reconsideration of our decision in Dayton-Granger, Inc., B-246226, Oct. 20, 1991, in which we dismissed its protest of the rejection of its proposal submitted in response to request for proposals (RFP) No. DAAB07-91-R-R571, issued by the Department of the Army, because, subsequent to the filing of the protest, the Army took corrective action rendering Dayton-Granger's protest academic. Dayton-Granger also claims the costs of pursuing its protest.

We deny the request for reconsideration and claim for costs.

The Army announced a proposed sole-source award to Trivec-Avant Corporation for 250 whip antennas, Trivec-Avant part number AV405-10, in the May 24 through May 30, 1991, Commerce Business Daily (CBD). The CBD synopsis referenced footnote 22 that gave potential sources 45 days to submit expressions of interest showing their ability to meet the agency's stated requirements. Dayton-Granger requested and received a copy of the solicitation referenced in the CBD notice, and submitted a proposal offering antennas of its own manufacture as an alternative to the Trivec-Avant

antennas. On October 1, the agency rejected Dayton-Granger's proposal.¹

Dayton-Granger filed a protest with our Office on October 11, challenging the rejection of its proposal by the agency. On October 23, we were informed by the agency that it had issued a stop work order to Trivec-Avant, and had asked Dayton-Granger to resubmit its proposal for evaluation because it had determined that its rejection of Dayton-Granger's proposal was in error. On October 30, we dismissed the protest as academic.

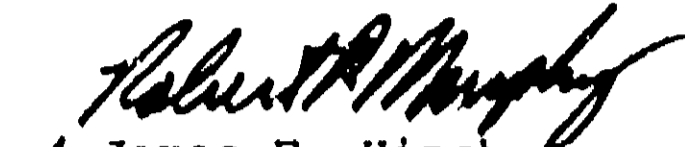
Dayton-Granger requests that we reconsider our dismissal of its protest because it believes "that an improper relationship exists between Trivec-Avant and the Army" and that "[i]t is highly unlikely that the Army will now make award to Dayton-Granger." We decline to do so. The jurisdiction of our Office is established by the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Mgmt. Servs., Inc.--Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299. Protests that merely anticipate improper agency action are speculative and premature. See General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512. Because Dayton-Granger's request for reconsideration is based on its anticipation that the agency may act improperly in the evaluation of its proposal, there is no basis for us to consider Dayton-Granger's protest at this time. If, in the future, the agency takes action that may properly form the basis for a valid bid protest, Dayton-Granger may file with our Office at that time.

Dayton-Granger also requests that we declare it entitled to recover the costs of filing and pursuing its original protest. Under our Bid Protest Regulations, we may declare a protester entitled to recover the reasonable costs of filing and pursuing its protest, including attorneys' fees, where the contracting agency decides to take corrective action in response to a protest. 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(e)). In adopting this regulation, we did not intend to award protest costs in every case where the agency takes corrective action in response to a protest. Our intent was to award costs where the circumstances of the case reflected that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Pulse Elecs., Inc.--Claim for Costs, B-243828.2, Aug. 19, 1991, 91-2 CPD ¶ 164. We do not

¹The agency awarded Trivec-Avant a contract under the solicitation on September 26, 1991.

view the time taken by the agency to implement corrective action--12 days--as unreasonable. The agency's action, initiated early in the protest process, provides no basis for a determination that the payment of protest costs is warranted. Id.

The request for reconsideration and claim for cost are denied.


for James F. Hinchman
General Counsel