



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: All Marine Services, Ltd.--Entitlement to Costs

File: B-270514.2

Date: February 13, 1996

Martin P. Willard, Esq., Perkins Coie, for the protester.
W. Michael Rose, Esq., Department of Transportation, for the agency.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protester is not entitled to the costs of filing and pursuing its protest, where the protest elicited corrective action on the part of the agency 1 month after it was filed with the General Accounting Office, even though the protester had raised the issue with the agency prior to filing its protest.

DECISION

All Marine Services, Ltd. (AMS) requests that our Office declare the firm entitled to recover the costs of filing and pursuing its protest of the Maritime Administration's (MARAD) award of a contract to Crowley Maritime Corporation. The contract in question covered work formerly covered by AMS' ship manager contract No. DTMA91-93-C-00054, which had been terminated for the convenience of the government. In its November 13, 1995 protest, AMS requested that its former contract be reinstated.

We find that the protester is not entitled to recover the costs of filing and pursuing its protest.

On December 14, 5 days prior to the due date for filing its agency report, MARAD took corrective action by offering to reinstate AMS' contract. We dismissed the protest as academic on December 19.¹

¹In its request for costs, AMS had alleged that MARAD had not offered it reinstatement on the same basis as other contractors and so requested that our Office reconsider our dismissal and retain jurisdiction until MARAD took the corrective action it had promised. It is now undisputed that MARAD did offer AMS contract reinstatement on the same terms as other ship manager contracts and AMS agreed to these terms, hence, we have no basis to reconsider our dismissal.

Under our Bid Protest Regulations, if the contracting agency decides to take corrective action in response to a clearly meritorious protest, we may declare the protester to be entitled to recover reasonable costs of filing and pursuing its protest, including attorneys' fees. Section 21.8(e), 60 Fed. Reg. 40,737, 40,743 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.8(e)). We will find an entitlement to costs only where an agency unduly delays taking such corrective action, Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558, and where an agency takes prompt corrective action, there is no basis for determining that the payment of protest costs is warranted. See Dynair Elecs., Inc.--Entitlement to Costs, B-244290.2, Sept. 18, 1991, 91-2 CPD ¶ 260. Here, since the agency took corrective action within 1 month of the filing of the initial protest, we find no basis for AMS' claim for protest costs. We view such action, taken early in the protest process, as precisely the kind of prompt reaction to a protest that our Regulations are designed to encourage. Aquidneck Management Assocs., Inc.--Entitlement to Costs, B-250479.2, Mar. 17, 1993, 93-1 CPD ¶ 240.

AMS' argues that the promptness of the corrective action should be measured from the time it first called the protest ground to the agency's attention. By letter to the agency of October 24, AMS opined that MARAD's anticipated reinstatement of some, but not all, terminated ship manager contracts would violate the Competition in Contracting Act of 1984 (CICA). AMS stated its intent to protest if it were excluded. On October 31, AMS learned that MARAD intended to award the former AMS contract to another firm. Two weeks later, it filed a protest with our Office.

Our protest jurisdiction is limited by CICA to written objections to a solicitation, proposed award, or award of a contract filed with our Office. 31 U.S.C. §§ 3551(1), 3552 (1994). Our authority to declare entitlement to protest costs extends to parties whose protests to our Office support a finding that a procurement statute or regulation was violated. 31 U.S.C. § 3554(c)(1). 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 (protester not entitled to protest costs where agency took corrective action within 1 month after protest was filed with our Office, even though protester had previously filed an agency-level protest concerning the same matter). It is not intended to ensure the fairness of agency-level processes occurring prior to the filing of a protest with our Office. Aquidneck Management Assocs., Inc.--Entitlement to Costs, *supra*. In short, the fact

that AMS earlier raised its objection to the agency has no significance with respect to our finding that the agency took prompt corrective action after AMS filed its protest with our Office.

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

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