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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Eastman Kodak Company--Entitlement to Costs

**File:** B-265644.2

**Date:** May 1, 1996

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David M. Nadler, Esq., Dickstein, Shapiro & Morin, for the protester.  
Danielle Conway-Jones, Esq., Army Corps of Engineers, for the agency.  
Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## DIGEST

Request that the General Accounting Office award costs of filing and pursuing a protest is granted where, after the agency filed its agency report, it took corrective action in response to the clearly meritorious protest allegations and the agency does not oppose the payment of the protester's costs.

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## DECISION

Eastman Kodak Company requests that our Office declare the firm entitled to recover the reasonable costs of filing and pursuing its protest challenging the conduct of the procurement under request for quotations (RFQ) No. DACW21-95-Q-0021, issued by the Army Corps of Engineers Savannah District for copier services.

We award Eastman Kodak its costs of pursuing the protest, including reasonable attorneys' fees.

The RFQ sought quotations to purchase or lease 17 copiers with an estimated volume of 65,000 copies per month per copier. After the RFQ was issued, the user advised the contracting division that the solicitation had been issued in error since its requirement was for copier services on a cost per copy basis, not for the purchase or lease of copy machines. Rather than cancel the RFQ, the contracting officer decided to accept quotes for the purchase or lease of copiers and to seek informal quotes for the services on a cost per copy basis. The agency conducted a price analysis of the quotes received--for purchase or lease of the copiers and for copier services on a cost per copy basis--and concluded that the cost per copy was the most advantageous cost method for acquiring these services. The Corps subsequently revised its estimated copy requirements from 65,000 to 80,000 copies per month per copier; thereafter, it decided to acquire 17 copiers under an existing contract between United States Army Information Systems Command (USAISC) and

Xerox Corporation.<sup>1</sup> By letter dated June 6, 1995, the Corps informed Eastman Kodak of its revised copy volume requirements and that it would procure these services under the USAISC contract.

Eastman Kodak filed an agency-level protest on June 16, alleging that the Corps had improperly evaluated its offer, which was based on an estimated volume of 65,000 copies per month, against its undisclosed requirement of 80,000 copies. This protest also questioned the accuracy of the revised quantity and the decision to use the USAISC contract to satisfy its needs. On August 8, Eastman Kodak protested to our Office, repeating its agency-level protest grounds; in addition, the protester alleged that the Corps's use of the USAISC contract violates the 30 percent requirements limit imposed against non-USAISC organizations.

On September 18, the Corps filed the agency's report and response to the protester's request for documents. Based on its review of the agency's report and response to its documents request, Eastman Kodak submitted a request for additional documents and renewed its request for a hearing on September 21. On September 28, a day prior to the date for the Corps's response to the protester's September 21 request for additional documents and a hearing, the Corps advised our Office that it was taking corrective action in response to the protest. The Corps stated that it will evaluate its copying needs based on recent copy volume usage to determine its minimum requirement for copy volume; conduct a new market survey to determine the most advantageous method of acquiring these services and allow Eastman Kodak and other interested vendors to respond to the agency's requirements. These actions effectively addressed the merits of the protest and were consistent with the remedies requested by the protester. Based on the agency actions, the protester withdrew its protest by letter dated September 29, and we closed our file without further action.

Eastman Kodak requests that we find it entitled to the costs of filing and pursuing its protest. The Corps has responded that it does not oppose the request.

Our Bid Protest Regulations provide that a protester may be entitled to reimbursement of its costs of filing and pursuing a protest, including reasonable attorneys' fees, where we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. 4 C.F.R. § 21.6(e) [now 4 C.F.R. § 21.8(e)] (1995); Multi-Bloc, Inc.—Entitlement to Costs, B-259182.2,

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<sup>1</sup>The USAISC contract provides copier equipment, maintenance and supplies for a fixed-price monthly rate (regardless of the monthly volume) to the USAISC its subordinate commands and field operating agencies. These services are also available to other military and civilian agencies provided their annual requirements do not exceed 30 percent of the estimated annual quantities established for USAISC.

Apr. 20, 1995, 95-1 CPD ¶ 217. Here, the Corps admits that its corrective action was in response to Eastman Kodak's protest that the agency's evaluation of the protester's quote was based on erroneous estimates and that Eastman Kodak should have been provided an opportunity to quote to the agency's changed needs. The Corps reports that it must now determine its minimum copy needs and the most advantageous method of acquiring the copy services before issuing a new solicitation. The Corps does not explain why the decision to take corrective action was not made when the agency initially reviewed Eastman Kodak's August 8 protest to this Office. Under these circumstances, where the agency did not take corrective action until approximately 2 weeks after the report was filed, and in view of the agency's lack of objection, we award Eastman Kodak its costs of filing and pursuing its protest, including reasonable attorneys' fees. Communications-Applied Technology Co., Inc.--Request for Entitlement, B-233561.5, Jan. 21, 1994, 94-1 CPD ¶ 26; Carl Zeiss, Inc.--Request for Declaration of Entitlement to Costs, B-247207.2, Oct. 23, 1992, 92-2 CPD ¶ 274. The protester should submit its claim for costs, detailing and certifying the time expended and costs incurred, directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

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