



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** PTI Supply Company--Entitlement to Costs

**File:** B-276559.3

**Date:** July 10, 1997

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Gregory L. DePuydt for the protester.

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

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## DIGEST

General Accounting Office (GAO) will not recommend payment of protest costs where the agency amended the protested request for quotations to delete a requirement objected to by the protester prior to the filing of the protest at GAO and, after the protest was subsequently amended to object to a new requirement, the agency took responsive corrective action the same day.

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## DECISION

PTI Supply Company requests that our Office recommend that the Department of the Army pay its protest costs associated with two protests of request for quotations (RFQ) No. DAHA02-97-Q-0026, issued on March 3, 1997, through the Federal Acquisition Computer Network (FACNET), by the Departments of the Army and the Air Force, National Guard Bureau, U.S. Property and Fiscal Officer for Arizona, for a portable pressure washer. This simplified acquisition RFQ contained a purchase description, which specified a Landa model VHW4-20021A and certain salient characteristics.

We deny the request.

In correspondence to the agency dated March 5, PTI objected to the adequacy of the RFQ's purchase description, contending that it was written around the features of the specified brand name and exceeded the minimum needs of the agency. On March 6, the agency issued Amendment 0001 which revised the purchase description to, among other things, require a portable hot water pressure washer that is "UL [Underwriters Laboratories] Certified;" the amendment also extended the date for receipt of quotations to March 21. PTI submitted a quotation on March 20 for a washer which PTI indicated was not UL certified but otherwise met all the agency's minimum requirements; PTI stated in its quotation that "UL certification is believed not to be an actual minimum agency need." The agency issued amendment 0002 on March 20, which replaced the "UL Certified" requirement with a different minimum requirement that the washer "must be wired per NEC [National Electrical

Code] guidelines;" Amendment 0002 also extended the date for receipt of quotations to March 26. PTI submitted a quotation to the agency on March 25 noting that its offered product meets all the agency minimum requirements and that "the NEC wiring requirement is a fictitious requirement and is under GAO protest." On April 2, the agency informed us that it had issued Amendment 0003 effective March 25, which deleted as inapplicable the NEC wiring requirement.

Meanwhile, on March 21, PTI protested to our Office the RFQ's requirement that the washer be "UL Certified" because the requirement allegedly favors the product of the brand name specified in the RFQ. PTI amended its protest on March 25 following its receipt of Amendment 0002, which removed the RFQ requirement that the washer be "UL Certified" but which added the new minimum requirement that the washer "be wired per NEC guidelines," which the protester contended is inapplicable and misleading and should be deleted from the RFQ.

Our Office dismissed PTI's initial protest as academic on March 31 because in issuing Amendment 0002 to remove the requirement that the washer be "UL Certified," the agency granted the relief requested by the protester. Likewise, on April 3, our Office dismissed PTI's amended protest as academic because of the agency corrective action in response to the protest.

On April 2, PTI submitted to our Office its request for reimbursement of its protest costs, contending that the agency took corrective action only as a result of its protests. We deny PTI's request.

Where a contracting agency takes corrective action in response to a protest, our Office may recommend that the agency pay the protester the costs of filing and pursuing the protest. 4 C.F.R. § 21.8(e) (1997). The intention behind implementing this regulation was not to award protest costs in every case in which an agency takes corrective action, but rather where an agency unduly delays taking corrective action in the face of a clearly meritorious protest. American Lawn Serv., Inc.--Entitlement to Costs, B-271039.2, May 15, 1996, 96-1 CPD ¶ 228 at 2. A protester is not entitled to protest costs, where, under the facts and circumstances of a given case, the agency has taken reasonably prompt corrective action. LORS Medical Corp.--Entitlement to Costs, B-270269.2, April 2, 1996, 96-1 CPD ¶ 171 at 2.

Here, as described above, on March 20, before PTI had even filed its initial March 21 protest with our Office, the agency, in response to the protester's objection to the requirement in its March 20 quotation, issued an amendment deleting the requirement that the washer be "UL Certified." Thus, there is no entitlement to protest costs since the agency's corrective action occurred prior to PTI's initial protest and therefore was not in response to it. See Norfolk Shipbuilding & Drydock Corp., B-248549; B-248549.2, Aug. 26, 1992, 92-2 CPD ¶ 127 at 4.

Moreover, the agency's corrective action in response to PTI's March 25 amended protest against the requirement that the washer "be wired per NEC guidelines" could not have been more prompt, as the agency issued Amendment 0003 to delete the offending requirement the very same day PTI amended its protest. Clearly, the record contains no basis for concluding that the agency unduly delayed taking corrective action; rather, the agency's immediate amending of the RFQ to delete the requirement objected to by the protester constitutes exactly the type of prompt corrective action which we seek in bid protest resolution, and which it is not our intent to penalize. See Southeast Technical Servs.--Entitlement to Costs, B-272374.2, March 11, 1997, 97-1 CPD ¶ 107 at 4-5.

We deny PTI's request for protest costs.

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of the United States.