



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: CDIC, Inc.--Entitlement to Costs

File: B-277526.2

Date: August 18, 1997

Michael H. Payne, Esq., Starfield & Payne, for the protester.

Michael Colvin, Department of Health and Human Services, 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

General Accounting Office will not consider request for recommendation of payment of protest costs where agency takes corrective action on or before the agency report due date.

DECISION

CDIC, Inc. requests that our Office recommend payment by the Department of Health and Human Services of CDIC's costs, including attorneys' fees, of filing and pursuing its protest of the elimination of its proposal from the competitive range under request for proposals No. 97-01N.

We dismiss the request.

CDIC filed its protest on July 15, 1997, requesting that its proposal be included in the competitive range. On July 18, the agency notified the protester that it would receive discussions and an opportunity to submit a best and final offer. The protester notified our Office on July 18 that it wished to withdraw its protest, simultaneously requesting that we recommend payment of its protest costs. On July 23, we dismissed the protest.

Our Bid Protest Regulations, 4 C.F.R. § 21.8(e) (1997), provide that where an agency decides to take corrective action in response to a protest, we may recommend that the agency pay protest costs, including attorneys' fees. However, we will make such a recommendation only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. CSL Birmingham Assocs.; IRS Partners-Birmingham--Entitlement to Costs, B-251931.4, B-251931.5, Aug. 29, 1994, 94-2 CPD ¶ 82 at 3.

The corrective action taken here by the agency 3 days after the filing of the protest is precisely the kind of prompt reaction to a protest that our Regulation is designed to encourage. As a general rule, so long as an agency takes corrective action in response to a protest by the due date of its protest report, we regard such action as prompt and decline to consider a request to recommend reimbursement of protest costs. See DuraMed Enters., Inc.--Request for Costs, B-271793.2, Oct. 4, 1996, 96-2 CPD ¶ 135 at 2.

CDIC's request for costs is dismissed.

Comptroller General
of the United States