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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: TRS Research and Transport Planning and Services, Inc.--Costs

File: B-290122.2

Date: July 25, 2002

Robert Fryling, Esq., Blank Rome Comisky & McCauley, for the protester.
Lynne Georges, Esq., Defense Logistics Agency, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's corrective action was not unduly delayed where taken prior to agency report due date, as extended; accordingly, GAO will not recommend that protester recover the costs of filing and pursuing its protest.

DECISION

TRS Research and Transport Planning and Services, Inc. request that we recommend that they be reimbursed the costs that they incurred in filing and pursuing a protest challenging the award of contracts to Global Intermodal Systems, Inc. and Sea Box, Inc. under solicitation No. SPO56002QHM04, issued by the Defense Supply Center--Philadelphia for cargo containers.

We deny the request.

The agency report responding to the underlying protest was due on April 15, 2002. On the due date, the agency notified our Office that it would not be filing a report due to impending settlement of the case. Our Office agreed to extend the report due date 1 week in the hope that the parties would succeed in settling the matter in that time. On April 19 the agency indeed notified our Office that the parties had agreed on corrective action, and on April 22, we dismissed the protest as academic.

Under our Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2002), we may recommend that a protester be reimbursed the costs of filing and pursuing a protest where the contracting agency decides to take corrective action in response to the protest. We will make such a recommendation, however, 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. 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. DuraMed Enters., Inc.--Costs, B-271793.2, Oct. 4, 1996, 96-2 CPD ¶ 135 at 2.

In general, if an agency takes corrective action in response to a protest by the due date of its protest report, we consider such action to be prompt and will not recommend reimbursement of protest costs. HSQ Tech.--Costs, B-276050.2, June 25, 1997, 97-1 CPD ¶ 228 at 2. We consider corrective action taken by the report due date to be prompt even where, as here, the report due date has been extended, because in such circumstances the protester has not been put to the time and expense of filing comments in response to such a report.¹ DuraMed Enters., Inc.--Costs, supra, at 2. As a result, the purpose of section 21.8(e) of our regulations--to encourage agencies to take corrective action in response to meritorious protests before protesters have expended additional unnecessary time and resources pursuing their claims--has been served.

The request for a recommendation that the agency reimburse TRS Research and Transport Planning and Services, Inc. for their protest costs is denied.

Anthony H. Gamboa
General Counsel

¹ This is true even assuming that, as the protester claims was the case here, the protester was not notified of the extension.