

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-218535.3 **DATE:** March 31, 1986

MATTER OF: Dresser Industries, Inc.

DIGEST:

Where Assistant Secretary of the Army clarifies and updates determination and findings (D&F) to remove any doubt that certain components of the tractors being procured were subject to restrictions on place of manufacture, this renders academic a protest that the restrictions in amended solicitation exceeded the scope of the restrictions in the original D&F justifying negotiation. Moreover, since the protester has not only not alleged that the more extensive production restrictions precluded it from competing for award but in fact has recently submitted a revised offer, the protester apparently retains the opportunity to compete for award and therefore the recovery of the costs of filing and pursuing its protest is inappropriate.

The International-Hough Division of Dresser Industries, Inc. (Dresser), protests the terms and conditions of request for proposals No. DAAE07-83-R-H291, issued by the United States Army Tank-Automotive Command (Army) for the supply of tractors (bulldozers). We dismiss the protest.

Dresser initially protested that the solicitation was improper because it had been amended to impose restrictions on the place of manufacture of certain components which exceeded those contained in the Secretarial-level determination and findings (D&F) pursuant to which this procurement was negotiated under the authority of 10 U.S.C. § 2304(a)(16) (1982). Prior to resolution of the protest, the Assistant Secretary of the Army for Research, Development and Acquisition clarified and updated the D&F to remove any doubt that the components in question were subject to the place of manufacture restrictions. While the protester's initial ground of protest has become academic because of the Assistant Secretary's action, the protester nevertheless maintains that the issuance of the modified D&F amounts to an "admission" that it was correct all along and that it therefore is entitled to the costs of filing and pursuing its protest, including attorney's fees.

Our Bid Protest Regulations, however, limit the recovery of the costs of filing and pursuing a protest to situations where the protester is unreasonably excluded from the procurement. 4 C.F.R. § 21.6(e). We have construed this to mean that where the protester has the opportunity to compete for award, recovery of the costs of filing and pursuing the protest is inappropriate. Galveston Houston Co., B-219988.4, Nov. 4, 1985, 85-2 C.P.D. ¶ 519. Since Dresser has not only not alleged that the more extensive production restrictions precluded it from competing for award but in fact has recently submitted a revised offer, it appears that the protester retains the opportunity to compete for award. Accordingly, the recovery of the costs of filing and pursuing its protest is inappropriate here.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel