



The Comptroller General
of the United States

Washington, D.C. 20548

Case

Decision

Matter of: Tenavision, Inc.

File: B-234639

Date: March 29, 1989

DIGEST

Where a procuring agency renders a protest academic by taking the corrective action requested by the protester, the General Accounting Office has no legal basis on which to find the protester entitled to its protest costs.

DECISION

Tenavision, Inc., seeks reimbursement of the costs of filing and pursuing its protest, including attorneys' fees, concerning invitation for bids (IFB) No. DAKF19-89-B-0015, issued by the Department of the Army to procure washing machines and dryers.

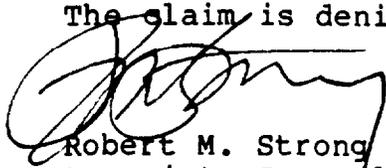
In its protest, Tenavision complained that the Army improperly classified the solicitation as one for services subject to the Service Contract Act of 1965, 41 U.S.C. § 351 et seq. (1982). The Army agreed with the protester and issued an amendment to reclassify the solicitation as one for equipment, thus rendering the protest academic. See Interstate Diesel Service, Inc., B-229610; B-229816, Feb. 17, 1988, 88-1 CPD ¶ 162. Subsequently, Tenavision withdrew the protest. Tenavision argues, however, that it is entitled to its protest costs because the corrective action taken by the Army was prompted solely by Tenavision's protest and ultimately will benefit the government.

Our authority to allow the recovery of protest costs under the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1)(A) (Supp. IV 1986), and our implementing regulation, 4 C.F.R. § 21.6(d)(1) (1988), is predicated on a determination by our Office that a solicitation, proposed award or award of a contract does not comply with a statute or regulation. If our Office does not make such a determination, then a claim for costs has no foundation.

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Consequently, where, as here, a protest becomes academic, there is no decision on the merits of the protest and thus, no basis for the award of costs. Sonic, Inc., B-225462.2, May 21, 1987, 87-1 CPD ¶ 531.

The claim is denied.

A handwritten signature in black ink, appearing to read "R. Strong", is written over a horizontal line.

Robert M. Strong
Associate General Counsel