

DECISION

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

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PC-II
31668

FILE: B-218633

DATE: July 11, 1985

MATTER OF: Atkinson Dredging Co.

DIGEST:

When a contracting agency agrees with the essential allegation of a protest that a government estimate was erroneous, and has taken corrective action by revising the estimate, the protest is academic.

Atkinson Dredging Company protests the failure of the U.S. Army Corps of Engineers, Norfolk District, to award the firm a contract under invitation for bids (IFB) No. DACW65-85-B-0036. The IFB, issued as a total small business set aside, was for maintenance dredging of the James River in Virginia. We dismiss the protest as academic.

Atkinson alleges that although it was the low, responsive and responsible small business bidder, the Corps proposes to reject all bids and resolicit the requirement on an unrestricted basis because Atkinson's bid was more than 125 percent of the government estimate. Atkinson complains that the government estimate contains numerous errors that make it unrealistically low and says that if the Corps were to correct only some of these errors, Atkinson's bid would be within the required 125 percent. Atkinson requests that we issue a decision to that effect and award the firm its bid preparation costs and the costs of pursuing this protest.

The Corps reports that the Norfolk District reviewed the government estimate in response to the protest and discovered a substantial error. The District obtained approval to revise the estimate and, as a result of the revision, Atkinson is now in line for award. No award

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will be made, however, until the Corps resolves another protest which complains that the Corps should not have set aside this procurement for small business.

The Corps believes that the issues raised by Atkinson's protest are now academic. Atkinson agrees, but says that it does not wish to withdraw its protest in case the agency changes its position.

When a contracting agency agrees with the essential allegations of a protest and has taken corrective action, this Office will dismiss the protest as academic. Surgical Instrument Company of America, B-218130, Mar. 22, 1985, 85-1 CPD ¶ 337. In this case, by agreeing to revise the government estimate to a figure that would allow for an award at the amount Atkinson bid, the Corps has taken the action Atkinson sought in filing this protest. The protest is therefore academic. If any subsequent action of the Corps--such as increasing the government estimate or sustaining the other protest--should place the award to Atkinson in jeopardy, the firm may file a protest here, provided it does so within 10 days of discovering the basis for any new protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985).

We dismiss the protest.



Ronald Berger
Deputy Associate
General Counsel