



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Green Plant Enterprises, Inc.

File: B-227060.2

Date: October 16, 1987

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### DIGEST

1. When protester challenging agency decision to resolicit rather than reinstate invitation for bids and award to protester after termination of an improperly awarded contract is awarded an interim contract, General Accounting Office (GAO) dismisses protest as academic; even if protest were sustained, ultimate remedy would be recommendation for award to protester, and where this has already occurred, no useful purpose would be served by GAO's considering the matter further.

2. Reimbursement of protest costs is not appropriate where protester received interim contract for remainder of base year requirement covered by protested solicitation.

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### DECISION

Green Plant Enterprises, Inc., protests the Department of the Navy's decision to resolicit rather than reinstate invitation for bids (IFB) No. N62467-86-B-5878 and award to Green Plant, after terminating for convenience a contract awarded under the IFB to Mark Dunning Industries, Inc.

We dismiss the protest as academic.

The IFB, issued on October 20, 1986, contemplated a combination fixed-price lump sum/indefinite quantity contract for grounds maintenance work at the Naval Training Center, Orlando, Florida. It solicited bids for an 8-month base performance period plus a 12-month option period, and provided for an initial contract term commencing February 1, 1987. However, the agency was not able to award a contract to Dunning until April 10, and the contracting officer believed that, because of the delay in award, an 8-month contract running through December 1987 would violate the law because appropriated funds for the last 3 months of the 1987 calendar year were not yet available. Accordingly, the agency awarded only a 5-month contract to Dunning (which

would end September 30, 1987), at five-eighths of Dunning's total bid price.

Green Plant initially protested the rejection of its low bid as nonresponsive. The Navy notified our Office by letter dated June 2 that it had determined that the award to Dunning "was improper because the contracting officer incorrectly determined that Green Plant's bid was nonresponsive." The Navy further advised that it planned to terminate Dunning's contract and resolicit, rather than make award to Green Plant, on the basis of "fiscal requirements not germane to the Green Plant protest." Green Plant amended its protest at this point to challenge the Navy's decision to resolicit.

After terminating the Dunning contract for the convenience of the government, the Navy competitively negotiated an interim grounds maintenance contract among the original bidders, using specifications modified from the original IFB. Three proposals were received and award was made to Green Plant, the low offeror, on June 15, for the period of June 17 through August 16. On August 14, the agency exercised a contract option extending the term of Green Plant's contract through September 30.

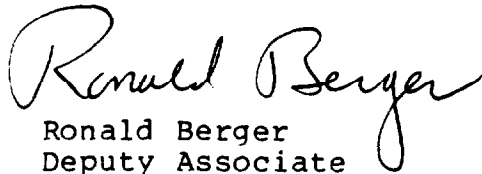
Green Plant wishes us to consider whether it should have received an award under the original solicitation--and thus should have received the award after termination of Dunning's contract--or whether resolicitation was justified. However, we view the question as academic because even if we concluded that award to Green Plant was the appropriate action, we would recommend no more than what ultimately occurred here with the award of an interim contract to Green Plant for the remainder of the base period. Therefore, no useful purpose would be served by our considering the matter further. See Ace Van & Storage Co., et al., B-213885 et al., July 27, 1984, 84-2 CPD ¶ 120; Northrop Services, Inc., B-211439, July 27, 1983, 83-2 CPD ¶ 134. As we will not consider matters that have been rendered academic, we dismiss Green Plant's protest. Id.

Remaining is the question whether Green Plant is entitled to recover the costs of pursuing its protest based on the Navy's failure to make the initial April 10 award to Green Plant, which deprived Green Plant of 2 months of performance. We find that reimbursement is not appropriate. Our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1987), provide for recovery of protest costs where the contracting agency has unreasonably excluded the protester from the procurement, except where we recommend award to the protester and the protester receives the award. We have construed this to mean that recovery of costs is inappropriate where

our recommendation will afford the protester an opportunity to compete for the requirement. Consulting and Program Management Services, Inc.--Request for Reconsideration, B-225369.2, July 15, 1987, 87-2 CPD ¶ 45.

Here, Green Plant not only had an opportunity to compete, but actually received a contract covering the remainder of the base period requirement. While it did not receive the award as a result of a recommendation by our Office, the result is the same. Green Plant is not entitled to reimbursement of its costs under these circumstances.

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel