

Turner



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Green Plant Enterprises, Inc.--Request for
Reconsideration
File: B-227060.3
Date: November 17, 1987

DIGEST

Protester is not entitled to protest costs where it received contract award for substantially the same requirement covered by the original solicitation.

DECISION

Green Plant Enterprises, Inc., requests reconsideration of that part of our decision, Green Plant Enterprises, Inc., B-227060.2, Oct. 16, 1987, 87-2 CPD ¶ , which denied Green Plant the costs of pursuing its protest. We affirm the decision.

The protest concerned Navy invitation for bids (IFB) No. N62467-86-B-5878 for grounds maintenance work for an 8-month base performance period plus a 12-month option period at the Naval Training Center, Orlando, Florida. The initial term of the contract was to commence February 1, 1987. The agency did not award the contract until April 10. 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, a contract for a 5-month period at five-eighths of the total bid price was awarded to Mark Dunning Industries, Inc.

The Navy initially rejected Green Plant's low-bid as nonresponsive and that firm protested to our Office. The Navy then informed us that the award to Dunning was improper because the contracting officer had incorrectly determined that Green Plant's bid was nonresponsive.

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The Navy terminated Dunning's contract and competitively negotiated the interim requirement among the original bidders. The agency made award to Green Plant, the low offeror, on June 15 for the period of June 17 through August 16. On August 14, the Navy exercised its contract option to extend the term of Green Plant's contract through September 30.

Green Plant's subsequent protest of the Navy's decision to resolicit instead of directing the award to it, was dismissed by our Office as academic because even if we had concluded that award to Green Plant was appropriate, 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. We also decided not to allow Green Plant recovery of its protest costs. We noted that under our Bid Protest Regulations recovery of protest costs is inappropriate where our recommendation will afford the protester an opportunity to compete for the requirement. 4 C.F.R. § 21.6(e) (1987). We found that Green Plant not only had an opportunity to complete, but actually received a contract covering the base period.

Green Plant takes issue with our decision denying protest costs on the basis that Green Plant did not receive the benefit it would have received had we sustained the protest and recommended award to Green Plant.

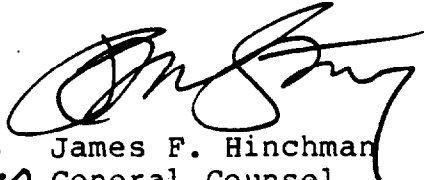
Our regulations allow recovery of protest costs in successful protests except where our Office recommends that the contract be awarded to the protester and the protester receives the award. 4 C.F.R. § 21.6(e). Green Plant argues that because it did not receive the full award in accordance with the terms of the original solicitation, the 21.6(e) exception does not apply.

Green Plant states that while the original solicitation provided for an 8-month contract with a 1-year option, the interim contract awarded the protester was only for 2 months, with a monthly renewal. Moreover, the protester notes that because the contract term is shorter, it is more expensive and risky to perform than the original requirement and does not cover the less-expensive dormant season.

If Green Plant had been awarded the contract under the original solicitation, it would only have received a 5-month, not an 8-month, contract because an 8-month contract would have run into the same appropriation problem that effected the original award to Dunning. In addition, neither Dunning's 5-month contract nor the protester's interim contract covered the dormant season. Green Plant

did, however, lose 2 months of a 5-month contract. Nothing in our regulations, however, states that a protester must receive the full benefit of the award as if it had been originally made to the protester. As stated in our original decision, we have construed § 21.6(e) to mean recovery of costs is inappropriate where the 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 was given the opportunity to compete for, was actually awarded and has performed substantially the same requirement it would have been called upon to perform had it received the award under the original requirement. Under the circumstances, we think the Navy's improper action was remedied and an award of protest costs would not be appropriate.

Our decision is affirmed.



James F. Hinchman
General Counsel