



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Leisure Investment Co.

File: B-233904.2

Date: April 4, 1989

DIGEST

Protester is not entitled to reimbursement for costs incurred in anticipation of being awarded a government contract which it did not receive.

DECISION

Leisure Investment Co. protests that the Naval Supply Systems Command, Department of the Navy, reneged on a commitment to purchase from Leisure certain abrasive mineral grit during an interim period between the termination of an existing contract with another supplier and the commencement of a contract under a new solicitation which the Navy was preparing to issue.

We dismiss the protest.

Leisure had previously protested to our Office the award of the above referenced terminated contract, No. N00140-89-D-4992, to Virginia Materials, Inc., on the basis that the awardee was not on the applicable qualified products list (QPL), and that there had been no waiver of the QPL for this solicitation. In response to the protest, the Navy determined that Leisure's allegation was correct and agreed to terminate the indefinite quantity contract which had been awarded and to resolicit, limiting the procurement to QPL offerors unless a waiver was issued. After this action was taken by the Navy, Leisure withdrew its protest and, on January 23, 1989, our Office closed its file in the matter.

Leisure now alleges that the Navy user activity subsequently inquired about the availability of abrasive grit, indicating that abrasive grit would be required and purchased from Leisure under purchase orders for less than \$25,000, during the interim period before resolicitation. Leisure states that in order to assure availability of the product, which is shipped from a west coast supplier for delivery to the Navy facility in Philadelphia, Leisure entered into a


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distribution agreement on January 27 and acquired 600 tons of abrasive grit as a result. Leisure alleges that it was called by a Navy official during the week of February 6 and advised that a purchase order would be sent after Leisure confirmed delivery on February 15. However, during that same week, the Navy relaxed the applicable specification standards for the abrasive grit, as a result of which purchase of the product from local companies on the QPL was permitted, and Leisure's 600 tons of higher priced product was "stranded" in the market place. A purchase order was never issued by the Navy.

If Leisure were asserting that a contract actually came into existence, which it does not quite allege, then its complaint would be a possible dispute under the contract for appropriate resolution as a contract dispute, which is outside the scope of our bid protest function. See 4 C.F.R. § 21.3(m)(1) (1988); Encon Management, Inc., B-233329.2, Dec. 5, 1988, 88-2 CPD ¶ 564. However, Leisure seems to be arguing more along the lines that it incurred the expenses in question in anticipation of being awarded a contract, in which case there is no basis for recovery since the expenditures were the result of a business judgment exercised prior to the award of a contract, and the government received no benefit as a result. See Grace Industries, Inc., B-229548.2, Dec. 23, 1987, 87-2 CPD ¶ 623; Cellular Product Service, Inc., B-222614, July 3, 1986, 86-2 CPD ¶ 32.

To the extent that Leisure's protest may be considered a claim for the recovery of its expenses as bid preparation costs, such costs are recoverable under our Bid Protest Regulations only where a protest is found to have merit. 4 C.F.R. § 21.6(d). Since we are dismissing Leisure's protest, there is no basis for the award of such costs. Grace Industries, Inc., B-229548.2, supra.

The protest is dismissed


for Robert M. Strong
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