

DECISION

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

FILE: B-219623.2 **DATE:** November 27, 1985
MATTER OF: Do-Well Machine Shop, Inc.

DIGEST:

Claim for attorney's fees is denied where agency, in response to protest, refers nonresponsibility determination to Small Business Administration so that protester in fact is not being unreasonably excluded from the competition.

Do-Well Machine Shop, Inc. (Do-Well) has filed a claim for attorney's fees in connection with a protest filed by Do-Well in which Do-Well alleged that the Air Force failed to refer a negative determination to Do-Well's responsibility to the Small Business Administration, contrary to the requirements of section 637(b)(7)(C) of Title 15, United States Code. We dismissed the protest after being advised by the Air Force that the contract awarded to another firm was canceled and the question of Do-Well's responsibility referred to the Small Business Administration (SBA), as requested by the protester. Do-Well now claims attorney's fees based upon the Air Force's "flagrant disregard" of the law.

Our Bid Protest Regulations, 4 C.F.R. part 21 (1985), provide that attorney's fees may be recovered "where the contracting agency has unreasonably excluded the protester from the procurement" 4 C.F.R. § 21.6(e). Here, however, it appears that the Air Force has not excluded the protester from the procurement. Since the matter now has been referred to the SBA, Do-Well is getting the opportunity to compete to which it is entitled. If the SBA finds Do-Well to be responsible, it can expect to receive the award. If the SBA does not find Do-Well to be responsible, Do-Well will not be entitled to award and cannot be said to have been unreasonably excluded from the competition.

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In these circumstances, the award of attorney's fees would not be appropriate. The claim is denied.

Harry R. Van Cleve
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General Counsel