

DOCUMENT RESUME

02663 - [A1672656]

[Final Rejection of Bid on Basis of United States District Court Decision]. B-188678. June 7, 1977. 2 pp.

Decision re: Brisk Waterproofing Co., Inc.; by Paul G. Dembling, General Counsel.

Issue : Federal Procurement of Goods and Services (1900).
Contact Office of the General Counsel: Procurement Law I.
Budget Function: General Government: General Property and
Records Management (804); General Government: Other General
Government (806).

Organization Concerned: General Services Administration; United
States District Court, District of Columbia.

Authority: B-184379 (1975); 51 Comp. Gen. 37. 4 C.F.R. 20.10.
United States District Court, D.C. (C.A. 77-0659).

A protester alleged that rejection of its bid as nonresponsive was improper. The protest was not considered by GAO since dismissal of the case by the United States District Court had the effect of final adjudication on merits of the relief sought. The appeal pending does not afford a basis for GAO consideration unless the appellate court requests it.
(Author/QM)

Mr. Ruppert
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DECISION



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

FILE: B-188678

DATE: June 7, 1977

MATTER OF: Brisk Waterproofing Company, Inc.

DIGEST:

Protest to GAO, alleging improper rejection of bid as nonresponsive will not be considered since dismissal of case by United States District Court had effect of final adjudication on merits on relief sought; appeal by protester now pending in appellate court does not afford basis for GAO consideration on merits where appellate court has not requested our decision. See 4 C.F.R. § 20.10 (1977).

Brisk Waterproofing Co., Inc. (Brisk), in correspondence dated March 25, 1977, protests the rejection of its bid on General Services Administration (GSA) project No. IMA 74-201 for masonry repairs on the U.S. Custom House, Boston, Massachusetts. Brisk's bid was determined to be nonresponsive for failure to list proposed subcontractors for certain specified areas of work to be performed under the contract as required by the solicitation. Brisk states that it did not list subcontractors for three categories of work because Brisk intended to perform this work and therefore did not believe it was necessary to list its own firm.

After filing its protest with our Office, counsel for Brisk on April 14, 1977, filed a complaint in the United States District Court for the District of Columbia (Civil Action No. 77-0659) requesting, inter alia, that the court grant an injunction directing GSA to award the contract to Brisk as the low responsive bidder. The injunctive relief which Brisk sought was not requested pending any determination by our Office. The stated grounds for the complaint are essentially the same as those presented in support of the protest.

On April 20, 1977, the District Court ruled on the merits of the Brisk case and dismissed the case after determining that the contracting officer had a rational basis for rejecting Brisk's bid. In its order, the District Court denied Brisk's motion for an injunction and dismissed the case. The court's dismissal of the case had the effect of a final

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adjudication on the merits on the relief sought and on all issues in controversy. See Perth Amboy Drydock Company, B-184379, August 18, 1975, 75-2 CPD 113; 51 Comp. Gen. 37 (1971).

On April 25, 1977, the United States Court of Appeals for the District of Columbia Circuit denied Brisk's "motion for stay pending appeal and for expedited consideration." However, the appeal is still pending.

By letter dated May 6, 1977, counsel for Brisk requested our Office to render a decision on the protest notwithstanding the action by the courts which counsel contends does not render the protest moot.

A protest will not be decided by our Office where the material issues are pending before a court of competent jurisdiction unless the court requests, expects or otherwise expresses interest in our decision. See 4 C.F.R. § 20.10 (1977). The District Court decided the case on the merits without indicating any request for a decision by our Office. Further, Brisk's request for relief to the United States Court of Appeals was not made pending any determination by our Office and the Appeals Court has not requested a decision from our Office.

Accordingly, the protest will not be considered.


Paul G. Dembling
General Counsel