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**DECISION**



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

September 22, 1981

FILE: B-203680

DATE:

MATTER OF: Pepsi-Cola Bottling Company of Salina, Inc.

**DIGEST:**

1. A protest challenging the agency's determination that the protester's bid was non-responsive becomes academic where the agency cancels the solicitation, the protester does not object to the cancellation, and the protester bids on the resolicitation of the requirement.
2. It would be premature for GAO to review a claim for start-up costs incurred prior to the contract award where the contract was never awarded, the claim is being pursued through Army channels, and the Army has neither ruled on the claimant's entitlement to recovery nor referred the matter to GAO for settlement.

Pepsi-Cola Bottling Company of Salina, Inc. (Pepsi) protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. DAKF19-91-B-0033, issued by the Department of the Army for beverages to be supplied at Fort Riley, Kansas. Pepsi's bid was found non-responsive because it offered to supply root beer as one of its beverages instead of the grape soda required by the IFB, and because it did not contain prices for line item 0007. In defense of its bid, Pepsi claims that someone in the contracting office orally authorized the root beer substitution, and that it did not enter prices for item 0007 because the IFB provided no lines for such entries.

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Following Pepsi's protest, the contracting officer canceled the solicitation based on a determination that both bids received were unreasonably high. Pepsi has not protested this cancellation and has bid on the resolicitation for this requirement. We understand Pepsi was not the low bidder under the resolicitation. In view of these facts, we consider Pepsi's protest academic. See Sperry Univac Federal Systems Division of Sperry Rand Corporation, B-193177.1, January 3, 1980, 80-1 CPD 9.

Pepsi alleges further that following the bid opening of the original solicitation on May 18, 1981, it was advised by a contracting official both that its bid had been accepted, and that installation of dispensing units at Fort Riley should be completed by June 1. Pepsi apparently proceeded in accordance with this advice and claims it made substantial expenditures in connection with this effort prior to being notified on May 27 that its bid was in fact nonresponsive. It has since then allegedly incurred additional expenses removing the installed materials. Pepsi claims it is entitled to reimbursement for these "start-up" and removal expenditures in the amount of \$114,841.66.

Pepsi is currently pursuing this claim through Army channels, and the Army, to date, has neither ruled on the matter nor referred it to our Office for settlement. See, Army Regulation 37-107, para. 5-25 (November 27, 1974). Under these circumstances, we think review by our Office would be premature.

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel