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DECISION



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

FILE: B-202791

DATE: March 1, 1982

MATTER OF: Mid-America Engineering Corporation

DIGEST:

Where agency cancels solicitation and satisfies its requirements through exercise of option under another contract so that no award or proposed award under protested solicitation is pending, protest of clause in solicitation is academic and will not be considered on the merits.

Mid-America Engineering Corporation, the third low bidder, protests the inclusion of the "Acquisition and Distribution of Commercial Products" (ADCP) clause in invitation for bids No. DAAA09-81-B-4352 issued by the Army Armament Materiel Readiness Command, Rock Island, Illinois. Mid-America basically alleges that the ADCP clause is defective and unduly restricts competition because it arbitrarily limits competition to firms in one commercial market. For the reasons discussed below, we dismiss the protest.

This procurement was initiated to obtain a quantity of five-ton trestles. The Army selected the item for procurement through ADCP procedures based on a market research study. This program implements an Office of Federal Procurement Policy policy encouraging the Government to purchase commercial off-the-shelf products when they will serve the Government's needs, provided the products have an established commercial market acceptability. Thus, the Army included the ADCP clause in the solicitation which limited bidders to those firms currently manufacturing trestles for the commercial market.

Two weeks prior to bid opening, Mid-America protested the inclusion of this clause in the IFB, maintaining that it eliminated from the competition manufacturers such as itself whose business is based largely on Government sales. Nonetheless, the following bids were received and opened:

Auto Specialties	\$18.93
Hein-Werner Corporation	\$23.14
Mid-America Engineering Corporation	\$34.50

Mid-America confined its protest to alleged defects and improprieties in the clause itself. It did not argue that it was entitled to award under the solicitation.

During our consideration of this matter, the Army canceled the solicitation because the bid acceptance period of the two eligible bidders had expired. Subsequently, the Army ordered most of its requirements through an existing option under another contract. The remaining requirements were acquired through small purchase procedures.

We believe the protest to be academic. It is undisputed that the Army has filled its requirement represented by the initial invitation and that therefore no award under any circumstances will be made under that solicitation. Nor will the requirement be resolicited. Under our Bid Protest Procedures, 4 C.F.R. Part 21 (1981), we consider protests of an award or proposed award of a contract. 4 C.F.R. § 21.1(a). Here, there is no award or proposed award pending--there is only a clause which may be utilized in a future procurement. We have often taken the position that a protest of a specification in such circumstances is premature and should await the issuance of a solicitation. See Constantine N. Polites & Co., B-189214, October 18, 1979, 79-2 CPD 267; Nixdorf Computer Corporation, B-193118, November 8, 1978, 78-2 CPD 334. We believe this principle is applicable here.

The protest is dismissed.

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