

DECISION



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

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FILE: B-206774

DATE: May 5, 1982

MATTER OF: Jonard Industries Corp.

DIGEST:

1. Whether bidder has performed past contracts in compliance with appropriate contract requirements is matter of contract administration and is not for consideration under GAO Bid Protest Procedures.
2. Protest--on bases of use of erroneous specifications and of restrictiveness of agency procurement practices--against possible awards under portions of solicitation is academic and not for consideration where solicitation portions have been canceled without awards having been made.

The Jonard Industries Corp. (Jonard) protests any possible awards to the Atlantic Hardware & Supply Corp. (Atlantic), the sole bidder, on tool set item Nos. 5, 6, and 9 under General Services Administration (GSA) invitation for bids No. FTP-AY-F0118-A. We dismiss the protest.

The first basis of the Jonard protest is that GSA did not permit Jonard and other potential bidders to compete for these items on an equal basis with Atlantic. GSA has allegedly permitted Atlantic on past contracts to deliver, without penalty, tools which are not properly marked with the manufacturer's name and part number, which are other than the brand name(s) specified in the Atlantic bids, and which do not in other ways meet contract specifications. The GSA has also allegedly permitted Atlantic to make deliveries of contract items contrary to the requirements in the contracts without penalty. These discriminatory GSA actions, Jonard maintains, have discouraged the submission of bids by anyone other than Atlantic because they have allowed--and, since their occurrence indicates that they will continue, will allow--Atlantic to offer prices lower than other

potential bidders, who would have to comply with all contract requirements, could have offered had they submitted bids.

The second basis of the protest is that the specifications involved for these tool sets are erroneous and incomplete. Jonard notes that in August 1981 it withdrew a protest filed with our Office under two like GSA solicitations on the understanding between itself and GSA that GSA would in the future permit all potential bidders the opportunity to compete equally for these tool sets. Jonard alleges that GSA has never complied.

GSA has advised that it has canceled the solicitation portions for item Nos. 6 and 9 because it was found that these were no longer needed and for item No. 5 because the Atlantic bid was nonresponsive for that item.

We dismiss the protest for the following reasons. First, whether or not a bidder has performed its past contracts with a contracting agency in a manner which complies with the appropriate contract requirements is a matter of contract compliance and is for consideration by the contracting agency, possibly GSA's Inspector General, not our Office under its Bid Protest Procedures. Aerosonic Corporation, B-193469, January 19, 1979, 79-1 CPD 35. Second, inasmuch as the solicitation portions for item Nos. 5, 6, and 9 have been canceled, the Jonard allegations, that erroneous and incomplete specifications are being used for these items are restrictive, are academic and are no longer for our consideration. Lanier Business Products, Inc.; Savin Business Machines Corporation, B-192432, February 9, 1979, 79-1 CPD 88.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel