

DECISION

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

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FILE: B-215532**DATE:** October 15, 1984**MATTER OF:** General Aero Products Corporation**DIGEST:**

GAO dismisses as academic protest of second low bidder against inclusion of warranty provision in solicitation, where bids opened after the protest was filed show that the protester is not the low bidder and would not be in line for award even if its protest was sustained and the warranty provision was omitted from the solicitation.

General Aero Products Corporation (Aero) protests any awards for traversing units under invitation for bids (IFB) No. DAAH01-84-B-A101, a small business set-aside, issued by the Department of the Army. Aero objects to the IFB requirement for a design workmanship guarantee (warranty) which the Army asserts is required to comply with section 794 of the Department of Defense Appropriation Act of 1984, Pub. L. 98-212. Aero argues the warranty provision is not required because the Army is furnishing a technical data package originated by a contractor other than the bidder.

We dismiss the protest as academic.

The IFB required bidders to price the warranty for 12-, 18- and 24-month periods. Eleven bids were received under this IFB, and nine bids, including Aero's, took no exception to the warranty provision and provided either prices or "no charge" for the warranty. The Army states that Aero's bid was the second lowest. Talley Corporation (Talley) was determined to be the low bidder. The Army determined that Talley was nonresponsive and, in accordance with applicable law and procedure, the Army referred the issue of Talley's responsibility to the Small Business Administration (SBA) for a certificate of competency (COC) determination. The SBA issued a COC to Talley on September 20, 1984, and the Army reports it intends to award to Talley.

Aero's protest is against the Army's decision to include a warranty provision under this IFB. The abstract of bids shows that Talley would be low bidder for the solicited quantities even if the warranty was omitted as a

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requirement. Although Talley bid "no charge" for the warranty periods, and Aero priced the warranty periods, when Aero's warranty prices are deducted from its bid, Talley's bid remains low.

Under these circumstances, the protest is academic and no purpose would be served by our review of the matter since Aero would not be in line for award even if its protest were sustained, and resolicitation would serve no useful purpose. See M. Pashelinsky & Sons, Inc., B-214973, Aug. 29, 1984, 84-2 C.P.D. ¶ 237; Tom Shaw, Inc., B-212771, Dec. 21, 1983, 84-1 C.P.D. ¶ 11. In view of this finding, we are denying the protester's request for a conference since it would serve no useful purpose. de Weaver and Associates, B-200541, Jan. 6, 1981, 81-1 C.P.D. ¶ 6.

We dismiss the protest.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel