



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CEC Manufacturing Corporation

File: B-232281

Date: September 19, 1988

DIGEST

Where, subsequent to the filing of a protest by the fifth low bidder of a contract award to the sixth low bidder, the contracting agency discovered errors in its initial evaluation of bids which mandated termination of initial contract and award to bidder that submitted the lowest bid price, protest has become academic and is dismissed.

DECISION

CEC Manufacturing Corporation (CEC) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. P-88-113, issued by the Panama Canal Commission (PCC) on a brand name or equal basis for a quantity of load break oil switches. The PCC rejected CEC's bid on the bases that it qualified its bid price in commercial notes submitted with its bid and, thus, failed to offer a firm fixed price as required by the IFB, and that the switches it offered did not include one of the salient characteristics of the brand name switch. CEC contends it did not qualify its bid price and that the switches it offered provided the referenced salient characteristic.

The protest is dismissed without awaiting the protester's comments since it is clear from the changed circumstances reported by the agency that the matter is now academic.
4 C.F.R. § 21.3(m) (1988).

Of the 10 bids received in response to the solicitation, the bids of the protester and the awardee were fifth and sixth low, respectively. Apparently, the five low bids, including the protester's, all had been rejected for various reasons. The PCC explains that as a consequence of CEC's protest of the contract award, the agency reviewed the award determination and discovered two errors in the evaluation of bids. First, the sixth low bidder to which award had been made had qualified the delivery terms in its bid in a manner inconsistent with the solicitation's

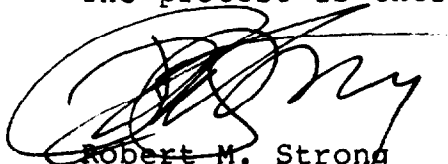
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delivery requirement and, therefore, award to that firm was improper. Second, the agency found that it had erroneously rejected the low bid as nonresponsive because in the initial evaluation it compared characteristics of the brand name model that were not included among the IFB's salient characteristics.

After recognizing these errors, the agency terminated the contract, as initially awarded, for the convenience of the government and awarded the contract to the low responsive bidder, whose bid price was \$17,157.63 lower than that of CEC. In view of these changed circumstances, CEC is no longer the next, but the fifth, low bidder.

At the time CEC protested the rejection of its bid as nonresponsive, that was an issue relevant to the outcome of this procurement since CEC was next in line to the firm which did receive the award. Now that the contract has been terminated and the contract awarded to the lowest bidder-- which actions are not the subject of any protest before us-- the responsiveness of CEC's fifth low bid has become academic and for us to decide the issue would be a meaningless exercise.

The protest is therefore dismissed.



Robert M. Strong
Deputy Associate
General Counsel