



The Comptroller General
of the United States

Washington, D.C. 20548

Aes further

Decision

Matter of: Instruments by Precision Ltd., Inc.
File: B-236059
Date: August 14, 1989

DIGEST

Protest of the rejection of a bid because of a restriction against other than domestic steel is academic where the contracting agency has agreed that the award to the second low bidder was improper and proposes to make award to the protester if it is determined to be responsible. Issue raised by the protester, which will pertain only to future procurements but which has no bearing on the immediate award, will not be considered.

DECISION

Instruments by Precision Ltd., Inc., protests the award of a contract for stainless steel blades to Aesculap Instruments Corp., the second low bidder, under Defense Personnel Support Center (DPSC) invitation for bids No. DLA120-89-B-0559. The low bid of Precision was rejected pursuant to Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 225.7002 (DAC 88-4) because according to the agency the steel used in its blades was not "melted" in the United States or in another qualifying country. Precision argues that the restriction should not apply here because there is no domestic source of this steel and the regulation provides that the restriction should have no effect if the agency determines that the metal is not domestically available at a sufficient quantity and satisfactory quality at United States market prices.

The agency reports that it has terminated the award to Aesculap because the 1989 Department of Defense Appropriations Act, Pub. L. 100-463 raised the application of the restriction from procurements valued at \$10,000 to those worth \$25,000 and the Aesculap award fits within the new threshold. The agency indicates that it is presently performing a responsibility determination on the protester and expects to make award to it.

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The protester does not want us to completely dismiss the protest. While the protester agrees that the Aesculap award no longer fits within the dollar threshold of the restriction it nevertheless wants this Office to decide whether the metal in its blades falls within the restriction in view of the protester's position that the metal is not available domestically. The protester argues that the issue is important and affects many contractors and for these reasons it urges us to decide this issue.

Since the agency has agreed that the award to Aesculap was improper and has terminated it and agrees that the award should be made to Precision subject to a determination of that firm's responsibility, the protester has received the relief that it had requested. Therefore, the protest is academic. S.T. Research Corp.--Request for Reconsideration, B-233599.2, Jan. 9, 1989, 89-1 CPD ¶ 15. We will not keep the case open in order to review the issue of whether the metal in the protester's blades should be subject to the DFARS § 225.7002 restriction. Our Office only considers protests involving solicitations issued by federal agencies and awards made or to be made under those solicitations. Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1988). Here, both the agency and the protester agree that the award to Aesculap was improper under the 1989 Department of Defense Appropriations Act. Although the agency may decide under future solicitations to apply the restriction to Precision's blades where the value of the procurement exceeds \$25,000, until such time as the agency proposes to reject the protester's bid under an actual solicitation, we have no basis to consider the issue. Propper Mfg. Co., Inc., et al., B-233321, Jan. 23, 1989, 89-1 CPD ¶ 58.

The protest is dismissed.


for
Ronald Berger
Associate General Counsel