



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Combustion, Inc.

File: B-235397.2

Date: October 13, 1989

DIGEST

Protest challenging solicitation requirements as unduly restrictive is dismissed as academic where the protester subsequently submitted a bid which was second low, and the allegedly restrictive requirements are not alleged to have had a material impact on the protester's price.

DECISION

American Combustion, Inc., protests that certain provisions in invitation for bids (IFB) No. MDA946-89-C0015, issued by the Washington Headquarters Services, Pentagon Building, unduly restrict competition. The IFB, issued on an unrestricted basis, sought bids for rental boiler services at the Pentagon Utility Plant to provide steam to heat the Pentagon complex and surrounding facilities. In its protest, filed before bid opening, American principally argued that the solicitation's contractor experience requirements, set forth in the solicitation as definitive responsibility criteria, as well as certain technical requirements of the specifications, were not reasonably related to the agency's minimum needs and restrict competition.^{1/}

We dismiss the protest.

Bid opening, which occurred after American filed its protest, revealed that three firms, including American, submitted bids. American was the second low bidder. American has never alleged that the allegedly restrictive specifications had any effect on the protester's bid price.

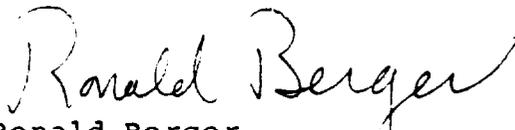
^{1/} The principal IFB provision at issue required the successful contractor to have supplied, installed and operated temporary boilers on at least 3 contracts of a similar size (50,000--200,000 pounds of steam per hour) within the last 5 years.

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Since American is not the low offeror, we need not decide the merits of this case. We will not review a timely protest of an allegedly restrictive solicitation where the evaluation of bids subsequently discloses that the protester is not the low priced bidder in line for award, and it does not appear (here, not even alleged) that the solicitation provisions complained of had a material impact on the protester's price. See Whittaker-Yardney Power Sys., B-227831, Sept. 10, 1987, 87-2 CPD ¶ 232. Thus, even if we granted the relief American requests and recommended that the agency delete the allegedly restrictive requirements, American would not be the low bidder in line for award.

Under these circumstances, the protest is academic; no immediate purpose would be served by our review of the protest. See General Aero Prods. Corp., B-215532, Oct. 15, 1984, 84-2 CPD ¶ 404; Ven-Tel, Inc., B-204233, Mar. 8, 1982, 82-1 CPD ¶ 207.2/

We dismiss the protest.


Ronald Berger
Associate General Counsel

2/ In its comments on the agency report, American, for the first time, questions whether the low bidder, Indeck Power Equipment Company, meets the experience requirements. We merely note that we have reviewed that company's experience statement which shows that the firm has successfully performed at least 14 projects of similar size, greatly in excess of the required 3 projects. The agency has made award to the firm.