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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20540**

FILE: B-208633

DATE: October 8, 1982

MATTER OF: Tone Industries, Inc.

DIGEST:

Protest of rejection of bid as non-responsive is dismissed where the agency's subsequent cancellation of the solicitation due to inadequate specifications makes consideration of the protest academic.

Tone Industries, Inc. protests the rejection as nonresponsive of its bid submitted in response to invitation for bids (IFB) No. 604-52-02 issued by the Veterans Administration (VA). Because the IFB has been canceled, the protest is now academic, and is, therefore, dismissed.

The IFB requested bids for the replacement of defective windows at the VA Medical Center in Lyons, New Jersey, and specified a type of window known as the Kasco DH-82-AP Series Thermal Barrier Prime Tilt, or an approved equal. Windows offered as "equal" to the brand name item were required to have parts interchangeable with the brand name item. After bid opening, the contracting officer determined that Tone's bid was nonresponsive because some of the parts of the window it offered were not interchangeable with those of the brand name item. The protester then filed a protest with this Office alleging that its window is the equal of the Kasco unit except for portions of the Kasco unit that are patented. The protester states that neither it, nor any other firm, could have offered these particular features without infringing upon Kasco's patent. The protester argues that it has complied with the "intent" of the IFB and that its bid was improperly rejected as nonresponsive.

Subsequent to the filing of this protest, the VA determined that the specifications contained in the IFB were inadequate and canceled the IFB. This action makes consideration of the issue raised by this protest academic. Pioneer Motor Inn, B-205727, May 17, 1982, 82-1 CPD 467.

It was by letter dated August 30, 1982, that the contracting officer informed the protester that all bids had been rejected under Federal Procurement Regulations (FPR) § 1-2.404-1(b)(1) due to the inadequacy of the specifications. The protester responded to this letter by informing the contracting officer that it intended to "proceed" with its pending protest. Although the protester has provided us with a copy of its response to the contracting officer, the protester has not filed a protest with our Office challenging the VA's conclusion that the specifications were inadequate and its decision to cancel the IFB. Because more than 10 days have elapsed since the protester first learned of the agency's action, any such challenge now would be untimely. 4 C.F.R. § 21.2(b)(2) (1982); Art's Supplies & Services, B-206885, May 3, 1982, 82-1 CPD 413.

The protest is dismissed.

J. H. Buckley, Jr.
for Harry R. Van Cleve
Acting General Counsel