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DECISION



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

FILE: B-219298 **DATE:** September 18, 1985
MATTER OF: U.S. PolyCon Corp.

DIGEST:

Although GAO will consider protests of awards "by or for" the government, a protester which is not an actual or prospective offeror in the procurement is not an interested party to contest the restrictiveness of the specifications.

U.S. PolyCon Corp. protests a procurement for central steam system improvements, including an underground heat distribution system (invitation for bids (IFB) No. 194057), conducted on behalf of the Department of Energy (DOE) by the Brookhaven National Laboratory, a DOE research facility operated by a prime management contractor, Associated Universities, Inc. All parties agree that this protest involves the award of a subcontract "by or for" the government. See 4 C.F.R. § 21.3(f)(10) (1985).

PolyCon contends that portions of the IFB specifications for the underground heat distribution system that require coated steel conduit (protective casing around piping) are unduly restrictive of competition because they preclude PolyCon from offering its non-metallic system. PolyCon also contends that these same specifications for coated steel conduits are not sufficiently rigorous to insure that an adequate system will be furnished. We dismiss the protest because PolyCon is not an actual or prospective offeror under the solicitation and is therefore not an interested party to contest the validity of these specifications.

Our consideration of bid protests, filed on or after January 15, 1985, is pursuant to the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. §§ 3551-3556 (West Supp. 1985). Section 2741(a) of CICA defines an "interested party" eligible to protest as an "actual or

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prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." This statutory definition has been incorporated in our Bid Protest Regulations implementing CICA. 4 C.F.R. § 21.0(a). Thus, while we will consider subcontractor protests where, as here, the subcontract is "by or for" the government, we will only do so where the protester is an actual or prospective offeror under the solicitation.

We find that PolyCon is not an actual or prospective offeror under this subcontract solicitation, but only a potential subcontractor or supplier to such an offeror. First, the solicitation was not simply for supplying an underground heat distribution system. Rather, the solicitation was for central steam system improvements and contemplated award to a general construction contractor since the scope of work included demolition of an existing boiler, alteration of building foundations, and various other modifications to buildings, as well as the provision and installation of an underground heat distribution system. PolyCon has traditionally characterized itself as solely a supplier of underground piping systems, not as a general construction contractor. Indeed, PolyCon has filed 23 bid protests with our Office since August 1983 concerning these underground conduit specifications. In these prior protests, it has generally characterized itself as a supplier of underground heat distribution systems or such can be discerned from the record. See PolyCon Corp.-- Request for Reconsideration, B-218304.2 et al., June 24, 1985, 85-1 CPD ¶ 714. In none of the prior cases does it appear that PolyCon bid as a general construction contractor upon a contract such as that here.

Second, the Navy also reports that PolyCon is not a bona fide offeror under this solicitation but is merely a supplier to a general construction contractor which would receive the award. PolyCon was provided a copy of DOE's report and has not disputed this statement, although it did dispute all other matters in the report. Thus, the only statement in the record indicating that PolyCon is other than a mere supplier is a brief, one sentence assertion by PolyCon in its initial protest that it is a "prime bidder." However, we have held in a case involving this same firm that a brief assertion of prime bidder status, without substantiation, is insufficient to confer standing where, as here, the evidence indicates that the

protester has always been a subcontractor/supplier. See PolyCon Corp.-- Request for Reconsideration, B-218304.2 et al., supra.

Thus, we conclude that PolyCon is not a potential offeror for the award of the subcontract in this case. Accordingly, it is not an interested party and its protest will not be considered.

This protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel