



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Whittaker-Yardney Power Systems
File: B-227831
Date: September 10, 1987

DIGEST

Protest challenging solicitation requirement for bid samples for battery procurement is dismissed as academic where the protester submitted an offer with required bid samples, the protester's price was substantially higher than that of the low technically acceptable offeror in line for award under the solicitation, and the requirement for bid samples does not appear to otherwise have had a material impact on the protester's price.

DECISION

Whittaker-Yardney Power Systems protests a requirement that bid samples be submitted in connection with request for proposals (RFP) No. DAAB07-87-R-C034 issued by the United States Army Communications-Electronics Command (CECOM), at Fort Monmouth, New Jersey. Whittaker claims that the solicitation requirement for bid samples is unnecessary and unduly restrictive of competition. Whittaker requests that the bid sample requirement be deleted from the RFP.

The solicitation was issued April 8, 1987, for 3,000 storage batteries, with an option for a 100 percent increase in quantity. Among other things, the solicitation required offerors to submit bid samples of five battery cases and covers. The samples were to be tested to make sure that they did not leak when immersed in water. The RFP provided that award would be made to the lowest priced, technically acceptable offeror. Under the RFP, an offer based on samples which did not pass the water immersion test would be rated unacceptable.

Whittaker submitted an offer with the required bid sample. By letter of August 10, the Army provided for our in camera review the bid sample test results and the prices offered by the firms. The Army is prepared to award the contract, consistent with the RFP's stated basis of award, to the firm which was found to be the lowest priced offerer which passed

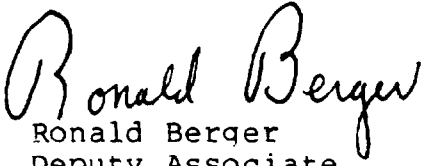
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the test. The record shows that Whittaker's price per unit was substantially higher than the proposed awardee's price per unit.

Since Whittaker 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 offers subsequently discloses that the protester is not the low priced offeror in line for award, and it does not appear that the solicitation provision complained of had a material impact on the protester's price. See Quality Bag, Inc., B-218547, July 1, 1985, 85-2 CPD ¶ 6; Tom Shaw, Inc., B-212771, Dec. 21, 1983, 84-1 CPD ¶ 11. This appears to be the case here. Thus, even if we granted the relief Whittaker requests and recommended that the Army delete the bid sample requirement, Whittaker would not be the low offeror in line for award.

Under these circumstances, the protest is academic; no immediate purpose would be served by our review of the matter. See General Aero Products Corp., B-215532, Oct. 15, 1984, 84-2 CPD ¶ 404; Ven-Tel, Inc., B-204233, Mar. 8, 1982, 82-1 CPD ¶ 207.

We dismiss the protest.


Ronald Berger
Deputy Associate
General Counsel