



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Interstate Diesel Service, Inc.

File: B-229610; B-229816

Date: February 17, 1988

DIGEST

1. Where agency agrees to amend solicitation to remove a provision which was the sole basis of protest, and reinstates protester's previously rejected offer for evaluation purposes (because offer was originally rejected for failing to comply with solicitation provision which was removed by amendment), protest is academic.
2. Dismissal of protest as academic does not provide a basis upon which proposal preparation and bid protest costs may be awarded.

DECISION

Interstate Diesel Service, Inc. protests the rejection of its alternate offers under request for proposals (RFP) Nos. DLA700-87-R-2944 and DLA700-87-R-3094, issued by the Defense Logistics Agency (DLA) for the procurement of Detroit Diesel injectors. Interstate argues that its offers were improperly rejected because the solicitation, while inviting alternate offers, erroneously required that offerors be either authorized Detroit Diesel parts dealers or licensed by Detroit Diesel to rebuild Detroit Diesel parts.

We dismiss the protests.

In response to the above-referenced RFP's, Interstate submitted offers for rebuilt Detroit Diesel injectors. Interstate, however, was not licensed by Detroit Diesel to rebuild the injectors and, after receipt of initial offers, the agency rejected Interstate's offers as technically nonconforming to the terms of the solicitations. Interstate's protests followed.

The agency in its reports has now stated that Interstate's offers were improperly rejected. Apparently, DLA had

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misinterpreted the end-user agency's requirements as demanding that offerors proposing to furnish rebuilt Detroit Diesel parts be licensed by Detroit Diesel. Accordingly, the agency states that the offers of Interstate will be reinstated for evaluation purposes. Furthermore, the agency states that the solicitations will be amended to remove the licensing requirement.

The agency's removal of the objectionable provision in each of the RFP's, coupled with the reinstatement of Interstate's offers, satisfies the protester's concerns; therefore, the protests are academic. See Areawide Services, Inc., B-225253, Feb. 9, 1987, 87-1 CPD ¶ 138.

In its comments on the agency reports, Interstate has requested that it be reimbursed its proposal preparation costs as well as the costs of filing and pursuing its protests. According to Interstate, even though its offer has been reinstated, it should nonetheless be granted its costs.

We disagree. Our authority to allow the recovery of the costs claimed by Interstate is predicated upon a determination by our Office that the solicitation, proposed award or award of a contract does not comply with statute or regulation. 31 U.S.C. § 3554(c)(1) (Supp. III 1985). Since the protests are academic, we make no such determination here, and therefore there is no basis for award of costs. Care Hospital Supply, Inc., B-226002, Mar. 2, 1987, 87-1 CPD ¶ 237.

The protests are dismissed.


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