



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Perma-Pipe Division of Midwesco, Inc.

File: B-230702

Date: April 14, 1988

### DIGEST

Protest of solicitation specifications for construction project as unduly restrictive of competition, filed by firm whose interest is that of a prospective supplier of material to the prime contractor or one of its subcontractors, is dismissed since protester is not an "interested party" eligible to have its protest considered under the Competition in Contracting Act of 1984 and General Accounting Office's implementing Bid Protest Regulations.

### DECISION

Perma-Pipe Division of Midwesco, Inc., protests as unduly restrictive of competition the specifications in invitation for bids (IFB) No. DACA45-88-B-0011, issued by the Omaha District of the Army Corps of Engineers, for a construction project. We dismiss the protest because Perma Pipe is not an interested party.

In its initial protest, Perma-Pipe objected to the fact that the IFB specifications prescribed the use of a shallow concrete trench underground heat distribution system to the exclusion of, or without permitting as an option the use of, a direct buried preinsulated pipe system. Describing itself as a "designer and manufacturer" and "supplier" of direct buried preinsulated pipe, Perma-Pipe alleged that the Corps' restriction of the specification to a shallow concrete trench system resulted from the failure to perform an appropriate life-cycle cost analysis of competing system designs.

The Corps advises us that this IFB was for the construction of a 190-room police security complex at Whitman Air Force Base, Missouri, a project whose value is approximately \$4-\$6 million. According to the Corps, the solicitation contemplated award to a general construction contractor and the specifications for the underground heat distribution system constitute only a small part of the contract requirements.

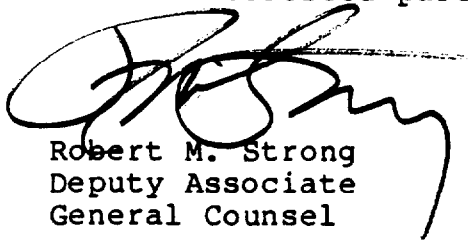
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Based upon the fact that Perma-Pipe did not submit a bid and described itself as a "manufacturer" and "supplier," which was consistent with the Omaha District's past dealings with the firm on other construction projects, the Corps asserts that the protester is a potential subcontractor or supplier and as such is not an interested party within the meaning of the Competition in Contracting Act of 1984 (CICA) and our Bid Protest Regulations.

In response to the Corps' position, Perma-Pipe concedes that it addressed the issues in this protest "as a supplier," but asserts that it does have the "capabilities of a contractor [and] has bid and received contracts in the past as a contractor." It has offered nothing, however, which would support a conclusion that it was in a position to bid on this project as the prime contractor even if the specifications were amended as it suggests.

Under the CICA, this Office only decides protest filed by an "interested party," which CICA defines as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. § 3551(2) (Supp. III 1985); 4 C.F.R. § 21.0(a) (1988). A prospective subcontractor or supplier does not have the requisite interest to be considered an interested party to protest under CICA since it is not a prospective or actual offeror. PolyCon Corp., 64 Comp. Gen. 523 (1985), 85-1 CPD ¶ 567.

The only reasonable conclusion we can draw from the parties' submissions is that Perma-Pipe's interest in this procurement is as a potential supplier to the prime contractor or one of its subcontractors. Since the protester is not an actual or prospective bidder on the protested IFB under CICA and our implementing Bid Protest Regulations, Perma-Pipe is not an interested party and its protest is dismissed



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