



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bade Roofing & Sheet Metal Co.

File: B-243496

Date: June 25, 1991

Bruce Barth for the protester.
Vicki E. O'Keefe, Esq., Department of the Navy, for the agency.
Scott H. Riback, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is dismissed as academic where agency proposes to terminate for the convenience of the government the contract previously awarded and resolicit the requirement, notwithstanding that the protester requested award of the contract in its protest, since the agency's proposed corrective action is the same as the recommendation the General Accounting Office would make under the circumstances.

DECISION

Bade Roofing & Sheet Metal Co. protests the award of a contract under solicitation No. N62472-90-B-7104 issued by the Department of the Navy. Bade's bid was rejected because it failed to sign the Certificate of Procurement Integrity.

The protest is dismissed because the agency is terminating the awardee's contract and resoliciting the procurement.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Mgmt. Servs., Inc.--Request for Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299. When an agency terminates an awardee's contract and resolicits for its needs, the agency action

renders the instant protest academic. It is not our practice to consider academic questions. See East West Research Inc.-- Recon., B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379.

Bade disagrees with the agency's proposed remedy--termination of the contract awarded and resolicitation of the requirement--and requests award of the contract to it. However, in cases such as this, where a solicitation contains a latent ambiguity that has the effect of misleading one or more bidders into submitting nonresponsive bids, the appropriate remedy is cancellation and resolicitation rather than award to the low bidder; it is not appropriate to make award to a bidder, which did not comply with a material invitation for bids requirement.^{1/} Shifa Servs. Inc., B-242686, May 20, 1991, 91-1 CPD ¶ _____. Thus, the remedy proposed by the agency was appropriate in the circumstances, and indeed would have been the precise relief we would have recommended had we considered the protest. See Shifa Servs. Inc., B-242686, supra.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel

^{1/} Where, as here, a bidder does not properly complete and execute a Certificate of Procurement Integrity, its bid is nonresponsive. See Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 91-1 CPD ¶ _____.