

**DECISION**

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

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**FILE:** B-216235**DATE:** October 15, 1984**MATTER OF:** Kern Instruments, Inc.**DIGEST:**

Protest that solicitation specifications restrict competition to only one manufacturer and are, therefore, overly restrictive is dismissed as academic where protester's bid was found responsive to the specifications but protester was second low bidder and not in line for award because of high price and not because of inability to meet allegedly restrictive specifications.

Kern Instruments, Inc. (Kern), protests the use of allegedly restrictive specifications in solicitation No. R4-84-27, issued by the United States Department of Agriculture, Forest Service (Forest Service), for a precision semiautomatic drafting table to interface with a Kern model stereoplotter currently in use by the Forest Service.

We dismiss the protest as academic.

The Forest Service drafted technical specifications for the drafting table on the basis of its minimum needs in conjunction with an assessment of the technical features shown to be available in brochures from all known manufacturers of the equipment. At the time the Forest Service issued the solicitation, it had specifically determined that models currently offered by Kern, Wild Heerbrugg Instruments, Inc. (Wild), and Data Tech would satisfy its requirements, as reflected in the solicitation technical specifications.

After receiving the solicitation, Kern initially protested to the agency that only the Wild drafting table could meet the technical specifications. Kern outlined eight specific features which it believed were offered only by Wild and, therefore, were overly restrictive. In response to this protest, the Forest Service issued an amendment changing three of the requirements, but retaining

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the other specifications unchanged as reflecting the minimum needs of the agency, and denying Kern's protest. Kern then protested to our Office that the solicitation restricted competition to only the Wild model.

Subsequently, at bid opening on August 31, 1984, the Forest Service determined that Wild had submitted the low responsive bid of \$42,450. Kern's bid of \$62,800 was found responsive by the contracting officer, but it was not in line for award because it was not low. With respect to the five specification features to which Kern had objected, the contracting officer explicitly determined that Kern's bid was, in fact, responsive to each of these requirements.

In view of the fact that Kern was the second low bidder, we will not consider the merits of its protest. Kern's bid was rejected not because it was found nonresponsive for failure to offer equipment conforming to the specifications to which it objected, but because it was not the low bid. We will not review a timely protest of allegedly restrictive specifications where bid opening subsequently discloses that the protester is not the low bidder and it does not appear that the specifications complained of had a material impact on the protester's price. Tom Shaw, Inc., B-212771, Dec. 21, 1983, 84-1 C.P.D. ¶ 11. Kern's price was increased because it chose to add a controller computer to connect its drafting table to the stereoplotter, while the specifications permitted a direct connection, without using such a controller computer. Thus, at most, Kern may be said to have bid higher because it elected to offer a feature which exceeded the agency's stated minimum needs, despite the fact that its own descriptive literature shows that it had available less expensive equipment which met the specifications. Under these circumstances, the protest is academic and no purpose would be served by our review of the matter. Somers Construction Company, B-209843.3, Oct. 25, 1983, 83-2 C.P.D. ¶ 490.

*Harry R. Van Cleve*  
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