



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Health Care Waste Services

File: B-266302

Date: January 19, 1996

Carlos Castellanos, for the protester.

Philippa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation requirement that contractor must be registered with the state as a regulated medical waste transporter is a contract performance obligation and not a precondition to award.

DECISION

Health Care Waste Services protests the award of a contract to Stericycle, Inc., by the Department of Veterans Affairs (VA) under invitation for bids (IFB) No. 620-13-95. Health Care contends that the agency improperly determined Stericycle to be responsible, because Stericycle did not meet a state registration requirement of the IFB at the time of award.

We dismiss the protest.

On July 28, 1995, the agency issued this IFB, for medical waste removal and disposal services. Of relevance to this protest, the agency issued amendment No. 2 which included, in the statement of work (SOW), a requirement that the contractor be registered with the New Jersey Department of Environmental Protection and Energy as a regulated medical waste transporter.

The VA received three bids by the September 7 bid opening. Both Health Care and another bidder qualified their bids.¹ Therefore the VA rejected these two bids as nonresponsive, and made award on September 25 to Stericycle, as the low responsive and responsible bidder.

The protester argues that the agency improperly determined Stericycle to be responsible, because it did not meet the solicitation requirement that it be registered with New Jersey as a regulated medical waste transporter at the time of award.

The agency argues that Health Care is not an interested party to protest the award to Stericycle because its bid was found nonresponsive. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an interested party may protest a federal procurement. An interested party is an actual or prospective bidder whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1995). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. Here, even though Health Care's bid was properly rejected as nonresponsive, the award was made to the only responsive bidder. Thus, if Health Care's protest were upheld, we could recommend that the award be terminated, the IFB be canceled, and the requirement resolicited, in which case Health Care would be eligible to compete. In these circumstances, Health Care has a sufficient stake in the outcome of the protest to render it an interested party to protest that the award was improper. Satin Am. Corp., B-261068, Aug. 16, 1995, 95-2 CPD ¶ 70.

The solicitation did not require that an offeror's registration must be valid prior to award, but rather provided in the SOW that the "contractor must be registered with the New Jersey Department of Environmental Protection and Energy . . . as a regulated medical waste transporter." As such, the registration or licensing requirement imposes a performance obligation rather than a prerequisite to award such as a definitive responsibility criterion or a matter to be considered as part of a technical evaluation. See Telos Field Eng'g, 68 Comp. Gen. 295 (1989), 89-1 CPD ¶ 238; White Water Assocs., Inc., B-244467, Oct. 22, 1991, 91-2 CPD ¶ 356. Any questions regarding the offeror's ability to meet the performance requirement is encompassed by the contracting officer's subjective responsibility determination, which we will review only where the protester makes a showing that this

¹Health Care qualified its bid by imposing an additional price for holiday pickup that was not provided for in the IFB. The other bidder qualified its bid by proposing different size containers from those required by the IFB.

determination may have been based upon fraud or bad faith. White Water Assocs., Inc., supra. No such showing has been made in this case and we therefore decline to review the contracting officer's affirmative responsibility determination.

The protest is dismissed.

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