

DECISION



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

FILE: B-190785

DATE: January 12, 1978

MATTER OF: Damper Design

DIGEST:

Protester's expectation of second-tier subcontract award does not, by itself, satisfy interested party requirement of 4 C.F.R. § 20.1(a)(1977). Accordingly, protest by potential second-tier subcontractor is dismissed.

Damper Design protests the rejection of the bid of Mesam Supply Limited, under invitation for bids No. F40650-77-B-0038, issued by the Arnold Engineering Development Center, Arnold Air Force Station, Tennessee, for valves. Damper Design's grounds for protest are that the rejection was erroneous, premature and not in accordance with the Armed Services Procurement Regulation (ASPR) section 2.

We have been advised by the Department of the Air Force of the following:

"Mesam Supply Limited, a Canadian firm, was the low responsive bidder on 24 groups of valves. As provided for in ASPR 6-504.1 (b)(2), the Canadian Commercial Corporation [CCC], as potential prime contractor, provided an endorsement of Mesam's bid to the procuring activity prior to bid opening. On 14 and 15 November 1977, a pre-award survey of Mesam Supply Limited was conducted. The survey was terminated on 15 November at the request of the Canadian Commercial Corporation because of a disagreement on solicitation provisions. Mesam and the Canadian Commercial Corporation stated that a contract would not be accepted unless either (a) the Conditional Acceptance and Payment provision was changed to state a date by which final payment would be made,

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or (b) the contract price was adjusted, presumably upward. On 23 November 1977, the contracting officer determined Mesam Supply Limited to be nonresponsible. This determination was based upon Mesam's intention to not comply with solicitation provisions, insufficient technical data to support an affirmative determination, and denial of Government access to any information on which to base an affirmative determination. On 30 November 1977, Mr. Donald K. Hager, President of Damper Design, lodged a protest against award of this procurement. Damper Design was a potential second-tier subcontractor to Canadian Commercial Corporation in the event they received a contract award."

Subsequently, our Office received a telegram from Damper Design advising that negotiations have been initiated between the Arnold Engineering Development Center and the CCC and, therefore, it "will await the results of those negotiations prior to supplementing the instant protest * * *."

However, since we find Damper Design not to be an interested party pursuant to our Bid Protest Procedures, there is no need for our decision to await the outcome of the aforementioned negotiations.

Our Bid Protest Procedures require that a party be "interested" in order that its protest may be considered. 4 C.F.R. § 20.1(a)(1977). In determining whether a protester satisfies the interested party criterion, consideration is given to the nature of the issues raised and the direct or indirect benefit or relief sought by the protester. Kenneth R. Bland, Consultant, B-184852, October 17, 1975, 75-2 CFD 242. This serves to insure a party's diligent participation in the protest process so as to sharpen the issues and provide a complete record on which the merits of a challenged procurement may be decided.

It is apparent, from the above, that the protester's financial interest in the relief requested is wholly contingent on factors outside the contract award process.

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The determination of nonresponsibility in no way related to Damper Design's possible participation in the procurement. Moreover, we note that neither Mesam nor CCC has joined in this protest. In view of this, we conclude that development and consideration of this matter as a bid protest would serve no useful purpose. See Elec-Trol, Inc., 56 Comp. Gen. 730 (1977), 77-1 CPD 441.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel