

DECISION



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

FILE: B-195401.2

DATE: February 11, 1980

MATTER OF: Therm-Air Mfg. Co., Inc.

DIGEST:

Bidder found to be nonresponsive is not "interested" party under Bid Protest Procedures to protest against two bidders it contends submitted non-responsive bids where other apparently responsive, responsible bidder exists and finding two bids to be nonresponsive would not lead to cancellation of invitation with possibility that protesting bidder could submit another bid under resolicitation.

Therm-Air Mfg. Co., Inc. (Therm-Air), protested any award to other than itself under Navy Ships Parts Control Center invitation for bids No. NOO104-79-B-0770. It contended that the bid of the low bidder was nonresponsive to the "Additional Ordering Data" clause in the invitation. It also contended that the bids of the third and fourth low bidders were nonresponsive for the same reason, noting that its bid and the bid of the high bidder (the Keco Corp.) were alone responsive to the requirement.

The contracting activity agreed with Therm-Air regarding the responsiveness of the low bid. However, the contracting activity declined to make the award to Therm-Air in view of the fact that Therm-Air was determined to be nonresponsive. The determination was forwarded to the Small Business Administration (SBA) for the possible issuance of a certificate of competency (COC). We learned on January 29, 1980, that the SBA declined to issue a COC because Therm-Air did not, within the time permitted, rebut the nonresponsibility determination of the activity. Therm-Air still wishes to maintain its protest against any award to either of the two bidders whose bids are allegedly nonresponsive to the above-noted clause.

[Contract Award Protest]

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Therm-Air is not eligible to maintain a protest under the instant invitation. A party must be "interested" under our Bid Protest Procedures, 4 C.F.R. part 20 (1979), in order to have its protest considered by our Office. Determining whether a party is sufficiently interested involves consideration of the party's status in relation to the procurement (e.g., prospective bidder or offeror; bidder or offeror eligible for award; bidder or offeror not eligible for award; non-bidder or nonofferor) and the nature of the issues involved. See, generally, American Satellite Corporation, B-189551, April 17, 1978, 78-1 CPD 289.

From the facts presented by Therm-Air, even assuming that the bids of the third and fourth low bidders are nonresponsive, there is another bidder to whom an award could be made under the invitation. The contracting activity advises that this bidder is responsible, its bid is considered responsive, and its bid price is not unreasonable. Thus, the situation is analogous to where a non-8(a) firm or a nonsmall business protests even though it cannot bid and expect to receive an award under a solicitation limited in participation to 8(a) or small business firms, respectively. There we have held these parties not to be interested parties due to their lack of a substantial and direct interest in the procurement. DoAll Iowa Company, B-197200, September 23, 1976, 76-2 CPD 276; Elec-Trol, Inc., 56 Comp. Gen. 730 (1977), 77-1 CPD 441. Since Therm-Air is ineligible to receive an award under the invitation in question and since no apparent need will arise to resolicit the procurement (thereby permitting Therm-Air to rebid), Therm-Air does not have direct and substantial interest with regard to award under this solicitation. Die Mesh Corporation, B-192668, November 29, 1978, 78-2 CPD 374.

Accordingly, the protest is dismissed.

for *Harry R. Van Cleave*
Milton J. Socolar
General Counsel