

13706 PL-11 m-melody

**DECISION**



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

FILE: B-196452.2

DATE: May 9, 1980

MATTER OF: Roy's Rabbitry

DLG 01470

**DIGEST:**

Prospective bidder who receives copy of IFB in mail 17 days prior to bid opening but chooses not to bid for reasons of personal convenience unrelated to procurement is not an "interested party" within meaning of GAO's Bid Protest Procedures for purpose of objecting to reasonableness of prices of those firms who did bid.

P.N.

Martin L. Roy, doing business as Roy's Rabbitry (Roy), protests the award of a contract to Dutchland Laboratory Animals, Inc. (Dutchland), under invitation for bids No. 263-79-B(65)-0186, issued by the National Institutes of Health (NIH), Department of Health, Education, and Welfare. DLG 04619 AGC 08028

Last year, Roy protested NIH's solicitation for laboratory rabbits on the basis that its provision for an aggregate award unduly restricted competition and precluded small producers such as Roy from competing. We sustained the protest, recommending a resolicitation under which bidders could offer to fulfill less than the Government's total requirements and the advantages and disadvantages of multiple awards would be considered. Roy's Rabbitry, B-193628, May 2, 1979, 79-1 CPD 305. In accord with our decision, NIH canceled that IFB and issued the one now under protest: the present solicitation contains the evaluation and award scheme we recommended.

Roy advises that although some delay in the mails was caused by an error in the address, it received its copy of the present IFB 17 days prior to bid opening. However, because preparation of the bid would interfere with family vacation plans, Mr. Roy stated he chose

[Protest Against Contract Award]  
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to "pass up" the procurement and did not submit a bid. After learning of the price at which the contract was awarded, Mr. Roy protested that it was unreasonably high. Mr. Roy has also recounted his past experiences with NIH which he contends demonstrates that NIH discourages competition for these contracts.

NIH contends that since Roy, for personal reasons, did not participate in the procurement in question, he is not an "interested party" qualified to raise this protest under our Bid Protest Procedures. 4 C.F.R. § 20.1(a) (1979). In urging the dismissal of Roy's protest, NIH cites our decision A. Kenneth Bernier and C. J. Willis, B-186502, July 19, 1976, 76-2 CPD 56, where we held that a mere "concerned taxpayer" was not sufficiently affected by a procurement to be considered an interested party. NIH also relies on Kenneth R. Bland, Consultant, B-184852, October 17, 1975, 75-2 CPD 242, holding that a private consultant asserting the presumed "right of any citizen" to lodge a formal protest under our Bid Protest Procedures, was not sufficiently interested to protest an award.

The requirement in our Procedures that a party must be "interested" in order that its protest might be considered serves to ensure good faith, diligent participation in the protest process so as to sharpen the issues, and a complete record upon which the correctness of the challenged procurement may be decided. Webcraft Packaging, Division of Beatrice Foods Co., B-194087, August 14, 1979, 79-2 CPD 120. In determining whether a protester satisfies the interested party criterion, our Office will examine the degree to which the asserted interest is both established and direct. In making this evaluation, we consider the nature of the issues raised and the direct or indirect benefit or relief sought by the protester. ABC Management Services, Inc., 55 Comp. Gen. 397 (1975), 75-2 CPD 245; American Satellite Corporation, B-189551, April 17, 1978, 78-1 CPD 289.

A protester may well be viewed as possessing a sufficient interest in the award selection in question even though the protester may not or does not choose to bid on the procurement. Kenneth R. Bland, supra; A. Kenneth Bernier and C. J. Willis, supra. For example, we considered

Roy's prior protest even though he did not bid because he was alleging that as a small producer, he was precluded from bidding by an unnecessary requirement in the IFB for an aggregate award. We considered that protest on the merits because Roy, as a potential supplier, had a direct interest in NIH's compliance with the regulatory requirement for obtaining competition to the maximum practical extent. Obviously, it would have made no sense that as a prerequisite to our consideration of his protest, Roy must have submitted a bid on terms he knew he could not meet.

Roy is not in the same position with respect to his present protest. The only barrier to his participation -- the aggregate award provision -- was removed when we sustained Roy's earlier protest and NIH issued a new solicitation permitting the evaluation and award of multiple contracts. However, Roy chose to "pass up" the resolicitation because the preparation of a bid conflicted with a planned vacation. Since Roy did not bid because of personal reasons and not because of any provision in the solicitation, we believe his position is much like that of a member of the general public. Thus, Roy is not "interested" within the meaning of our Bid Protest Procedures.

Although the foregoing is dispositive of this protest, we note, for the protester's information, that the allegations raised are unsupported by the record. Our Office will not question an agency determination of price reasonableness unless that determination is unreasonable or there is a showing of bad faith or fraud. Reza Seyyedini Art and Film Production, B-191470, August 21, 1978, 78-2 CPD 138. Roy's claim that an increase in price of 50 percent compared to the prior procurement is unreasonable would not warrant cancellation of the award to Dutchland since the record contains no probative evidence of unreasonableness, bad faith or fraud.

Similarly, adequacy of competition is a substantially subjective determination to which a reasonable degree of agency discretion must adhere. 50 Comp. Gen. 382 (1970). Here, two bids were received, NIH has determined that Dutchland's price is reasonable, and there is no evidence

in the record that NIH precluded any bidder from competing. Under these circumstances, there would be no basis for concluding that NIH did not obtain adequate competition as alleged.

The protest is dismissed.

*Harry R. Van Cleave*

*for* Milton J. Socolar  
General Counsel