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DECISION

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

FILE: B-201664

DATE: April 17, 1981

MATTER OF: RAH, Inc.

[Protest of Department of Interior Contract Award]
DIGEST:

Bidder which is ineligible for award because of failure to submit bid bond required by solicitation is not an "interested party" within context of GAO Bid Protest Procedures for purpose of protesting award to another bidder. Even assuming award to other bidder was improper, protester is nevertheless ineligible for award and possibility of cancellation and resolicitation is remote.

RAH, Inc. (RAH), protests award of item 2 to Marmot Construction Works, Ltd. (Marmot), under invitation for bid (IFB) YA-554-IFB1-22 issued by the Department of the Interior (Interior) for tree planting in the Myrtlewood, Coos Bay District, Oregon. The solicitation was a set-aside for small businesses and labor surplus area concerns. RAH contends that Interior has not complied with the regulations governing labor surplus area set-asides in awarding the contract to Marmot.

RAH contends that in accordance with the applicable regulations, it should have been given priority for award of item 2 because it is a firm located in a labor surplus area and Marmot is not.

Interior points out that RAH's bid was nonresponsive because RAH failed to submit a bid bond for item 2 as required by the IFB and also failed to submit a firm, fixed bid price, indicating instead that the bid price "may be negotiated." Interior also states that RAH's interpretation of the labor surplus set-aside regulations is erroneous and the award to Marmot was proper.

We decline to consider this protest on the merits. RAH's failure to submit a bid bond in accordance with

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the IFB requirement rendered its bid nonresponsive. We therefore conclude that RAH is not eligible for award and is not an "interested party" permitted to pursue this protest under our Bid Protest Procedures, 4 C.F.R. part 20 (1980).

Our Bid Protest Procedures, supra, state that a party must be "interested" before we will consider the merits of its protest. Climatological Consulting Corporation, B-197906, August 14, 1980, 80-2 CPD 81. We will consider a number of factors in determining whether a protester satisfies the interested party criterion, including the protester's status in relation to the procurement (e.g., prospective bidder, bidder eligible for award, bidder not eligible for award, non-bidder), 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. Where a protester has been determined ineligible for an award and it does not appear that circumstances would warrant cancellation and resolicitation of the procurement (thereby permitting the protester to rebid), the potential benefit to the protester is intangible and indirect and that party generally will not be considered sufficiently interested to maintain the protest. See, for example, Don Greene Contractor, Inc., B-198612, July 28, 1980, 80-2 CPD 74.

In the instant case, RAH was ineligible for award because it failed to submit a bid bond in accordance with the IFB. It is well settled that a bid guarantee requirement is a material term of an IFB and that, except as provided in regulations not applicable here, a procuring activity must reject as nonresponsive any bid that does not conform to that requirement. United States Contracting Corporation, B-198095, June 27, 1980, 80-1 CPD 446; Ron Grove's Heating, Air Conditioning, and Piping, Inc., B-198687, May 23, 1980, 80-1 CPD 360.

Even if it was found that Marmot, the awardee, was awarded the contract on the basis of an erroneous interpretation of the applicable procurement regulations, RAH would nevertheless be ineligible for award. We further note that the possibility of cancellation and resolicitation of the procurement is remote since at least six other bidders bid on item 2 and could be considered for

award if award to Marmot proved improper. Therefore, we find RAH lacks the necessary direct and substantial interest with respect to award under this solicitation to be regarded as an interested party under our Bid Protest Procedures. de Weaver and Associates, B-200541, January 6, 1981, 81-1 CPD 6; Don Greene Contractor, Inc., supra; Therm-Air Mfg. Co., Inc., B-195401.2, February 11, 1980, 80-1 CPD 119.

The protest therefore is dismissed.

Harry R. Van Cleve

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Acting General Counsel