

DECISION



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

02.11.83

27011

FILE: B-212258

DATE: December 12, 1983

MATTER OF: Younge Mechanical, Inc.

DIGEST:

Protester is not an interested party under Bid Protest Procedures since, if protest were upheld, protester would not be in line for award.

Younge Mechanical, Inc. (Younge), protests the decision by the Veterans Administration (VA) to permit Bruns M. Myers, Jr. (Myers), to correct a mistake in bid for item No. 1 in invitation for bids (IFB) No. 81-110 and the award to Myers on the corrected basis. Younge contends that Myers' bid either should have been rejected as nonresponsive or withdrawn because of the error.

We dismiss the protest.

The IFB solicited bids on alternate bases. Item No. 1 solicited bids for work on air handling systems Nos. 5, 6, 7 and 8. The same work was divided over the remaining three items. Item No. 2 covered air handling systems Nos. 5 and 7, while item No. 3 covered air handling system No. 6 and item No. 4 covered air handling system No. 8. The IFB indicated that a single award would be made for item No. 1 or item No. 2 or a combination of items Nos. 2, 3 and 4.

Myers is the low bidder on either item No. 1 (\$446,521) or on the combination of items Nos. 2, 3 and 4 (\$560,005). Younge's bids on item No. 1 and the combination of items Nos. 2, 3 and 4 are \$575,000 and \$575,900, respectively.

Because the contracting officer suspected an error in Myers' bid price for item No. 1, Myers was provided an opportunity to establish the error and intended bid price for item No. 1. As a result of the evidence presented, the VA allowed Myers to correct the bid for item No. 1 from \$446,521 to \$493,981 and made award to Myers.

There is nothing on the face of Myers' bids for items Nos. 1, 2, 3 or 4 which limits, reduces or modifies Myers' obligation to perform the work required under the IFB. Thus, the bids for all of these items are responsive. Miller Disposal Services, Inc., B-205715, June 7, 1982, 82-1 CPD 543.

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Since Myers' bids are responsive, Younge is not eligible to maintain the protest against the award for item No. 1. Under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1983), a party must be "interested" 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. Pluribus Products Inc., B-210444, March 7, 1983, 83-1 CPD 226. In general, we will not consider a party's interest to be sufficient where that party would not be eligible for award even if the issues raised were resolved in its favor. See Bay Shipbuilding Corporation--Reconsideration, B-209435.3, December 7, 1982, 82-2 CPD 516.

Even if we were to conclude that Myers' bid on item No. 1 should have been withdrawn instead of corrected, Myers' bid for the combination of items Nos. 2, 3 and 4, which covers the same work as item No. 1, is lower than Younge's item No. 1 or combination bid. Therefore, if Younge's protest were upheld, Younge would not be in line for award. Accordingly, Younge is not an interested party within the meaning of the Bid Protest Procedures. Doucette Industries, B-211887, June 17, 1983, 83-1 CPD 665.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel

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27010

FILE: B-212449

DATE: December 13, 1983

MATTER OF: Byrd Tractor, Inc.

DIGEST:

1. Protest is timely when it is submitted within 10 days after protester learns that agency is interpreting solicitation in a way which is different than protester's interpretation.
2. Protester's interpretation of confusing solicitation descriptive phrase of item requested is not reasonable where protester fails to consider the specifications which describe this item.

Byrd Tractor, Inc. (Byrd), protests the proposed award of a contract to Gaithersburg Ford Tractor Company (Gaithersburg) under Department of the Army (Army) invitation for bids (IFB) No. DABT56-83-B-0048. Byrd, the fifth low bidder, alleges that the first four bids are nonresponsive.

The protest is denied.

Item number 0002 of the IFB requested bidders to supply three general purpose industrial tractors. Byrd offered to supply a Ford model number 4610 LCG, an industrial tractor. The first four low bidders offered to supply general purpose tractors. The Army found that all five bids were responsive and it intends to award a contract to Gaithersburg, the low bidder. Byrd contends that the first four low bids should be rejected as nonresponsive because they do not offer industrial tractors.

The Army first contends that Byrd's protest should be dismissed as untimely because it concerns an impropriety in the solicitation which was apparent prior to bid opening and Byrd did not submit its protest until after bid opening. See 4 C.F.R. § 21.2(b) (1983). We disagree. Byrd did not learn the basis for its protest until after bid opening when Byrd became aware that bids offering general purpose tractors were considered responsive. Since Byrd protested

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within 10 days of this date, Byrd's protest is timely. See Conrac Corporation, B-205562, April 5, 1982, 82-1 CPD 309; 4 C.F.R. § 21.2(b)(2).

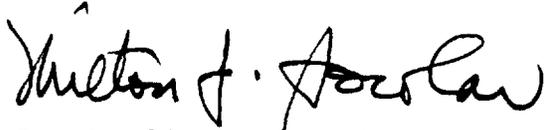
Byrd argues that the solicitation clearly requested bidders to supply an industrial tractor because section "B," the schedule of items, requested a "general purpose industrial" tractor.

Acknowledging that the schedule of items calls for a "general purpose industrial" tractor, the Army responds that this description has no meaning until the IFB specifications of the tractor are considered. In this respect, although section "B" lists the requested tractor as a "general purpose industrial" tractor, section "B" also notes that the desired tractor is described by the specifications contained in section "C." Section "C.2" specifically states that it contains the specifications for a "general purpose industrial" tractor. The Army alleges that it was seeking to procure tractors which met these specifications and that the tractors offered by the four low bidders did so. The Army thus concludes that the four low bidders submitted responsive bids.

Solicitations must be read as a whole in a reasonable manner. Tymshare, Inc., B-193703, September 4, 1979, 79-2 CPD 172. Although the solicitation is somewhat confusing because "general purpose" and "industrial" describe different types of tractors, a reasonable reading of the solicitation demonstrates that bidders were being requested to supply "general purpose industrial" tractors which met the specifications. Thus, Byrd should have been on notice that the Army was requesting bids for a tractor which met these specifications. Byrd and the Army agree that the difference between a general purpose tractor and an industrial tractor is that an industrial tractor has a heavier front axle. The specifications, however, do not request a tractor with a heavy front axle. While Byrd argues that there would be no need to specify a heavy front axle because it is standard equipment on an industrial tractor, we do not find this argument persuasive. The specifications list a number of tractor components, which are obviously standard equipment; and some of the specifications note that the tractor should have the manufacturer's standard parts. Thus, we believe that it was unreasonable for Byrd to assume that only an industrial tractor met the specifications. Moreover, we note that the seven bidders other than Byrd offered general purpose tractors, four of which offered the same tractor line (Ford) as Byrd.

Since the Army alleges and Byrd does not dispute that the tractors offered by the four low bidders met these specifications, we will not disturb the Army's finding that these bids were responsive.

The protest is denied.

for 
Comptroller General
of the United States