



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: First Federal Data Services Company  
File: B-224183.2  
Date: February 18, 1987

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## DIGEST

1. Second low bidder under canceled solicitation is not an "interested party" under General Accounting Office Bid Protest Regulations to protest the cancellation because assuming that the protest were sustained, the firm would not be in line for award.
2. Bid which inaccurately represented that bidder possessed an interim top secret facility clearance is not subject to rejection as "nonresponsive" since bidder's possession of a security clearance, or its ability to obtain one in a timely fashion, involves the bidder's responsibility.

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## DECISION

First Federal Data Services Company protests the cancellation after bid opening of invitation for bids (IFB) No. MDA903-87-B-0008, issued by the Department of the Army, Defense Supply Service-Washington for the pick-up, delivery, and storage of magnetic computer tapes.

We dismiss the protest.

Bids were solicited in August 1986, and were opened on September 8, 1986. Two bids were considered to be timely submitted and opened, that of DataBase Co., Inc. and First Federal.<sup>1/</sup>

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<sup>1/</sup> A bid submitted by the Data Vault Corporation was rejected by the Army as late. Data Vault protested to our Office on September 19, 1986, the rejection of its bid arguing that the bid was timely delivered in accordance with the IFB. However, on September 30, Data Vault's protest (B-224183.1) was dismissed as academic because the Army had notified us that the IFB had been canceled.

The IFB, in the statement of work at clause 6 and in clause K-17 ("security clearance"), required that all of the selected contractor's employees engaged in the performance of work pursuant to an award under the solicitation have a current top secret (military) security clearance. In addition, the above-stated clauses and clause L-5 ("security requirements") required that the selected contractor be able to demonstrate that it has a "current facilities clearance, a current 'interim' facilities clearance, or can obtain one of these" before 20 days after bid opening. Finally, under clause K-17 of the IFB, bidders had to represent that they will not assign employees for classified work under the contract unless and until they have been granted the necessary (top secret) security clearance and to indicate the level of their facility's security clearance as either "interim clearance" or "final clearance."

By letter dated September 15, 1986, First Federal complained to the Army that although the low bidder, DataBase, stated (in its bid and orally at bid opening) that it had a top secret interim facility clearance, it in fact did not have an interim top secret facility clearance at bid opening. First Federal thereby argued that due to the alleged "false representation" by DataBase concerning its security clearance, DataBase's bid should have been rejected and award made to First Federal as the low responsive, responsible bidder.

By amendment 0002 to the IFB the Army canceled the solicitation. According to the contracting officer, the IFB was canceled because on September 26, the contract specialist for the IFB spoke with a senior industrial security specialist at the Defense Investigative Service (DIS) and was told at that time that a final facilities clearance was mandatory to store the tapes covered under the IFB, and therefore an interim facilities clearance was not acceptable. The contracting officer then decided that cancellation of the IFB was necessary because the contracting officer determined that the low bidder, DataBase, could receive an interim facility clearance as minimally required by the IFB, but DataBase could still not perform the contract work without a final security clearance. In other words, cancellation was considered necessary because the IFB as stated did not reflect the government's needs.

First Federal argues that the DIS industrial security specialist never told the contract specialist for this IFB that a final top secret facilities clearance was required.

Moreover, First Federal contends that the guidelines established by the Department of Defense (DOD) for safeguarding classified information (DOD 5220.22-R), indicate that the IFB's security clearance requirements were adequate, i.e., an interim top secret facilities clearance is acceptable for the storage of the contract tapes.

The Army contends that First Federal is not an "interested party" under our Bid Protest Regulations to protest the cancellation of the IFB because First Federal was not the low bidder and therefore would not have been eligible for the award if the IFB was not canceled. The Army states that on October 9, 1986, it determined that DataBase was the low responsive, responsible (eligible) bidder under the IFB, that DataBase could have received the necessary security clearance within the required timeframe, and "the apparent misrepresentation of its facilities security clearance was not intentional, but rather a misunderstanding and/or error."

To be eligible to pursue a protest, a party must be "interested" within the meaning of our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1986). Generally, an interested party is defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a); Wespercorp, Inc., 65 Comp. Gen. 309 (1986), 86-1 C.P.D. ¶ 167. Where, for various reasons, a protester would not be in line for an award even if this Office were to resolve the protest in its favor, the firm generally lacks standing as an interested party to have the matters in issue considered on the merits. See, e.g., Comsel Corp., et al., B-221170.3 et al., Jan. 31, 1986, 86-1 C.P.D. ¶ 115; Multinational Business Services, Inc., B-221362, Jan. 9, 1986, 86-1 C.P.D. ¶ 25.

For the reasons stated below, we agree that First Federal is not an interested party to protest the cancellation of the IFB because First Federal would not be in line for award if the IFB were reinstated. Although First Federal argues that the Army was required to reject DataBase's bid because DataBase "misrepresented" that it had an interim top secret facilities clearance, thereby making First Federal the low bidder under the reinstated IFB, we see no legal merit to First Federal's position.

First, DataBase, in its comments on the protest, states that it was not its intent to misrepresent its facility clearance,

but simply believed that the secret facility security clearance it had when it submitted its bid was the equivalent to the interim top secret clearances required by the IFB; further, as indicated above, the Army found that DataBase did not intentionally misrepresent its facility clearance, and there is no evidence of record that suggests the contrary.

Second, having the necessary security clearances or the ability to obtain them in a timely fashion involves bidder responsibility, and not bid responsiveness; therefore, since responsibility is determined at the time of award rather than bid opening, an error in a firm's bid documents pertaining to the bidder's security clearance may not itself cause rejection of the bid if information provided before the award indicates that the firm has or can obtain the required security clearance and the firm otherwise is capable of performance. See WEMS, Inc.--Request for Reconsideration, B-222553.2, July 30, 1986, 86-2 C.P.D. ¶ 127; B-161211, July 11, 1967. The record here shows that the contracting officer was notified by DIS that DataBase could in fact receive an interim top secret facility clearance within 20 days with agency sponsorship, and that the contracting officer therefore determined that DataBase would be a responsible bidder under the criteria set forth in the IFB. First Federal has not provided any evidence to show that DataBase would not have been able to obtain the necessary security clearances in a timely manner and, in fact, concedes that DataBase "could have been the winner" had DataBase "executed the bid documents honestly and correctly."

In these circumstances, we find no reason to question the Army's October 9 determination that DataBase was the low responsive, responsible bidder under the canceled IFB. See WEMS, Inc.--Request for Reconsideration, B-222553.2, supra. Therefore, since it would not be in line for award should the IFB be reinstated, First Federal is not an interested party to protest the cancellation. Falcon Management, Inc., B-222200.2, May 9, 1986, 86-1 C.P.D. ¶ 448.

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel