

Martin P# II



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: CC Distributors, Inc.

File: B-225603

Date: March 19, 1987

## DIGEST

Third low bidder is not an interested party for purpose of challenging the eligibility of the low bidder for award even though the protester states that the second low bidder intends to assign any contract it might receive to the protester, because the protester does not have the necessary direct interest in the results of the procurement since the assignment depends on an event that may not happen. Moreover, transfer of the rights and obligations arising out of a bid or proposal is permissible only where the transfer is to a legal entity which is the complete successor in interest to the bidder or offeror by virtue of a merger, corporate reorganization, the sale of the entire business, or the sale of the entire portion of a business embraced by the bid or proposal, which is not the case here.

## DECISION

CC Distributors, Inc. (CCDI), protests the award of a contract to National Support Systems, Inc. (NSSI), under solicitation No. F31610-86-R-0010 by the Department of the Air Force. The contract awarded requires NSSI to provide a Contractor Operated Civil Engineer Supply Store at Seymour Johnson Air Force Base. CCDI contends that the Air Force, in making its determination that NSSI was a regular dealer within the meaning of the Walsh-Healey Public Contracts Act, 41 U.S.C. §§ 35-45 (1982), did not follow the instructions set out in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 22.608-3 (1986), for processing protests received before award that challenge the legal status of the proposed awardee as a regular dealer.

We dismiss the protest because CCDI is not an interested party within the meaning of our Bid Protest Regulations, 4 C.F.R. § 21.0 (1986).

CCDI concedes that it was only the third lowest bidder but insists that it has the necessary economic interest since it has "reliable information" that the second lowest bidder,

Wheeler Bros., Inc., does not wish to perform the contract. CCDI further states that if its Walsh-Healey protest is successful, Wheeler Bros. intends, after receiving the award, to sell its contract-related inventory to CCDI and to request a novation of the contract under FAR, 48 C.F.R. §§ 42.1203 and 42.1204. CCDI supports this position with an affidavit from its president stating that he has been told by Wheeler Bros. that if CCDI were successful in its protest, Wheeler Bros. would "be prepared to assign the contract to CC Distributors in accordance with standard novation procedures." In addition, CCDI has submitted a copy of a letter it received from Wheeler Bros. stating that Wheeler Bros. would "consider" assigning the contract to CCDI.

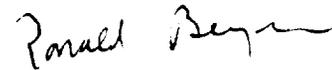
Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551 (Supp. III 1985), an interested party for purposes of eligibility to protest must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract. This statutory definition is reflected in our Bid Protest Regulations implementing CICA. 4 C.F.R. § 21.0(a). Where there are intermediate parties between the protester and the low bidder or offeror, we have generally considered the protester to be too remote to establish itself as an interested party since it would not be in line for an award even if its protest were sustained. Eason & Smith Enterprises, Inc.--Request for Reconsideration, B-222279.2, Apr. 18, 1986, 86-1 CPD ¶ 386.

The issue here therefore is whether CCDI, the third low bidder, will be in line for the award if we sustain its protest. We think not. The transfer or assignment of rights and obligations arising out of a bid or proposal is permissible only where the transfer is to a legal entity which is the complete successor in interest to the bidder or offeror by virtue of merger, corporate reorganization, the sale of the entire business or the sale of an entire portion of a business embraced by the bid or proposal. Ionics Inc., B-211180, Mar. 13, 1984, 84-1 CPD ¶ 290. CCDI is not now a successor in interest to the business of Wheeler Bros. or that entire portion of Wheeler Bros. business involved in this procurement. Any other attempted assignment of a contract would be prohibited by the Assignment of Claims Act, 41 U.S.C. § 15 (1982).

We agree with CCDI that a third low bidder who can demonstrate some reason why the low bidder and the second low bidder are not eligible for award can be considered to be an interested party. However, CCDI has alleged only that the

low bidder, not the second low bidder, is ineligible for award. In addition, if the remedy sought is not award under the protested solicitation but cancellation and resolicitation of the requirement and the protester is a potential competitor under the new solicitation, the protester has the necessary direct interest to be considered an interested party. Flight Resources Inc., B-220680.3, June 3, 1986, 65 Comp. Gen. \_\_\_\_\_, 86-1 CPD ¶ 518. CCDI has not requested cancellation and resolicitation, nor is cancellation appropriate in the present circumstances.

Accordingly, we dismiss the protest.



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General Counsel