



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Seagull Technical Services Co.
File: B-226756
Date: June 19, 1987

DIGEST

Protester who alleges that two lowest bids ought to be rejected as nonresponsive is not an interested party under General Accounting Office's Bid Protest Regulations because protester, as the fourth low bidder, is not next in line for award if the protest were sustained.

DECISION

Seagull Technical Services Co. protests the award of a contract under invitation for bids (IFB) No. N63042-87-B-1624, issued by the Department of the Navy for nickel cadmium batteries. Seagull alleges that the two lowest bids were nonresponsive.

We dismiss the protest on the ground that Seagull is not an interested party to bring a protest under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1986).

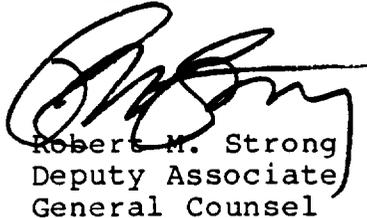
To be an interested party, a protester's economic interest must be directly affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). If a protester is not next in line to receive the contract award if its protest is upheld, then the protester is not an interested party for the purpose of protesting the responsiveness of a lower bid. See T.J. O'Brien Co., Inc., B-223680, Aug. 11, 1986, 86-2 C.P.D. ¶ 177.

Seagull challenges the responsiveness of the two lowest bidders, Action Battery Wholesalers and Industrial Components, on the ground that both bidders failed to indicate in their bids that the batteries they offered to supply were foreign end products. According to Seagull, such a failure to inform violates the Buy American Act, which requires that a differential be added to the price bid for a foreign end product. See Spectrum Leasing Corp., B-218323.3 et al., July 11, 1986, 86-2 C.P.D. ¶ 56.

Seagull admits in its protest that if Action's and Industrial's bids are rejected as nonresponsive, then "Omega [Electronics] and Seagull are first and second when tested for price." Seagull is not protesting Omega's bid, then, so that by Seagull's own admission, Omega would stand next in line to receive the contract if Seagull's protest were upheld. Seagull therefore is not an interested party.

Moreover, even if Seagull were an interested party, we still would dismiss the protest. The reason is that the Navy advises that Action, the low bidder, was offering to supply batteries that were made in the Federal Republic of Germany, and the bid thus was excepted from application of the Buy American Act differential. See 48 C.F.R. subpart 225.74 (1985).

The protest is dismissed.



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