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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Maschhoff, Barr & Associates

File: B-233322

Date: November 18, 1988

DIGEST

1. Where firm would not be in line for award were its protest sustained, protest is dismissed since protester does not have the required direct interest in the contract award to be considered an interested party under Bid Protest Regulations.

2. General Accounting Office does not consider protest issues which are essentially made on behalf of other potential competitors who themselves may properly protest as interested parties.

3. Contention that the low quoter will be unable to perform at its quoted price constitutes an allegation that the firm is not responsible; General Accounting Office generally does not review affirmative determinations of responsibility.

DECISION

Maschhoff, Barr & Associates (MB&A) protests the award of a contract to Occupational Health Services (OHS) under request for quotations (RFQ) No. N6258388TA189, issued by the Department of the Navy as a small business-small purchase set-aside to provide an Employee Assistance Program at Port Hueneme, California. MB&A objects to the award of this contract to a large business, OHS. MB&A also alleges that OHS will be unable to perform the contract at its quoted price.

We dismiss the protest.

As a small purchase, this procurement was conducted under the simplified procedures outlined in the Federal Acquisition Regulation (FAR), part 13 (FAC 84-26).^{1/} The

^{1/} We base this decision solely on the protester's submissions.

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Navy mailed RFQs to 17 companies, including OHS, all of which were thought to be small business concerns. (OHS, a large business, was listed in the agency's records as a small business as of last year.) OHS' quote of \$8,621 was the lowest of the five quotes received, while MB&A apparently quoted \$27,120, the highest quote received. In addition, the Navy received quotes of \$8,760, \$13,200, and \$17,000.

Upon review of the quotations, the second low quote, which was submitted by a small business, was found to be technically unacceptable. The contracting officer then determined that none of the remaining small firms was "within a competitive range" in terms of price reasonableness. The Navy indicated to MB&A that it based its decision to cancel the set-aside pursuant to FAR § 13.105(d)(3) (FAC 84-26), which provides that if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the small business-small purchase set-aside and complete the purchase on an unrestricted basis. Consequently, the contracting officer canceled the set-aside and made award to OHS.

MB&A first argues that award to a large business under the small business-small purchase set-aside was improper; the protester contends that the award instead should have been made to a small business concern which received the highest technical rating at the lowest price. Under our Bid Protest Regulations, we will only consider a protest by an interested party, i.e., an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. §§ 21.0(a), 21.1(a) (1988). A party is not an interested party to protest where it would not be in line for award were its protest sustained. See, e.g., Systems-Analytics Group Corp., B-229836, Apr. 12, 1988, 88-1 CPD ¶ 358. Here, as stated above, when MB&A was given the opportunity to compete exclusively against small businesses, it submitted the highest-priced quotation. Moreover, MB&A concedes that its quote was not competitive and that it would not have received the award even if the small business set-aside had been retained. Thus, even if we were to conclude that the award should have been made to the low small business quoter, MB&A would still not be in line for award. Accordingly, MB&A is not an interested party to protest this matter.

Next, MB&A argues that if award may properly be made to a large business, OHS should have had to compete with other large businesses for the award. MB&A essentially argues

that the requirement should have been resolicited on an unrestricted basis since large businesses which were not given an opportunity to participate in the procurement may now wish to compete on an unrestricted basis. We do not think that MB&A, a small business which would presumably benefit from a restricted solicitation, is the appropriate party to raise this issue on behalf of large businesses, a class to which it does not belong. See XMCO, Inc., B-228357, Jan. 26, 1988, 88-1 CPD ¶ 75. Accordingly, MB&A is also not an interested party to protest this issue.

Finally, MB&A alleges that OHS will not be able to perform the contract at its quoted price. OHS's ability to perform at its quoted price is a matter of responsibility, and our Office will not review protests of affirmative determinations of responsibility absent a showing of possible bad faith or fraud on the part of procuring officials or that definitive responsibility criteria set out in the solicitation may not have been met. 4 C.F.R. § 21.3(m)(5); AJK Molded Products, Inc., B-229619, Feb. 1, 1988, 88-1 CPD ¶ 96. Neither exception has been alleged here. Further, to the extent that MB&A suggests that OHS has submitted a "below-cost" quotation, it is well established that there is nothing improper either in a firm's proposing what may be a below-cost quote to obtain a government contract or in the government's willingness to place an order with that firm based on a below-cost quote after determining that the firm is responsible. Electronics Corp., B-229934, Jan. 19, 1988, 88-1 CPD ¶ 52.

The protest is dismissed.



Ronald Berger
Associate General Counsel