



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: H.B. Mac, Inc.
File: B-233815
Date: February 23, 1989

DIGEST

1. Protest by third lowest bidder against the proposed award of a contract to either of the lower bidders is dismissed where the protester fails to state a valid basis of protest against the intervening lower bidder; protester would not be next in line for award if its protest were sustained, and therefore is not an interested party eligible to protest award.
2. Bid bond is sufficient, and bid thus is not nonresponsive, where the bond is properly executed and includes the required penal sum; whether individual sureties on bond have sufficient financial capacity is matter of responsibility generally not for review by General Accounting Office.

DECISION

H.B. Mac, Inc. protests the award of a contract to any other bidder under invitation for bids (IFB) No. N62474-86-B-0248, issued by the Department of the Navy for the construction of a child care center at the Marine Corps Air Station in El Toro, California. The contract is a 100-percent set-aside for small, disadvantaged businesses. We dismiss the protest because H.B. Mac is not an interested party.

H.B. Mac's was the fourth lowest-priced bid received by the November 30, 1988 bid opening date. The first, second, and third low bidders, respectively, were Amerind Construction, Super Mex, Inc., and Somera Construction. The low bidder, Amerind, later failed to extend its bid and therefore is no longer in line for award. H.B. Mac contends that the low bid of Super Mex, Inc., is nonresponsive for failure to include a price for an additive item, and that the second low bid of Somera was nonresponsive due to bid bond deficiencies. H.B. Mac concludes that the Navy acted

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improperly in not rejecting these two lower bids, which would leave H.B. Mac in line for the award.

H.B. Mac has failed to state a sustainable basis of protest against Somera and therefore is not an interested party to protest the proposed award to the low bidder, Super Mex. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551 (Supp. IV 1986), and our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1988), a party must be "interested" in order to have its protest considered by our Office. A party is interested if its direct economic interest would be affected by the award or failure to award the contract, 4 C.F.R. § 21.0(a), which generally means that the protester must be next in line for award of the contract if the challenged offeror were eliminated from the competition. Professional Medical Products, Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2. In applying this rule, we have refused to consider the merits of a protest where the protester was other than the next lowest bidder and failed to successfully challenge all intervening bids. Id. This is the case here.

H.B. Mac argues that Somera's bid is nonresponsive because the required bid bond named only one individual surety where two were required, and because the bid bond was otherwise insufficient on its face. The assertion that only one individual surety was named in Somera's bid is simply incorrect. Somera submitted two affidavits of individual surety as required, one from Mr. George E. Schamberger, and one from Mr. Virgil W. Smith. Similarly, there is no merit to the protester's claim that the bond is insufficient on its face; the bid bond is properly executed and includes a penal sum in excess of 20 percent of the bid price, as required by the solicitation. We find no other deficiencies in the bond.

The protester also appears to question the adequacy of one surety's net worth based on the statement of net worth and other bond obligations included in this affidavit of individual surety. The affidavit of individual surety is a document separate from the bid bond, however, and has no bearing on the responsiveness of a bid; rather, it serves solely as an aid in determining the responsibility of an individual surety, a matter we generally will not consider. See Site Preparation Contractors, Inc., B-232105, Sept. 20, 1988, 88-2 CPD ¶ 269. Since we find no other basis for questioning the bond, Somera's bid is responsive.

As Somera thus would be in line for award if H.B. Mac's protest against award to Super Mex were successful, H.B. Mac

lacks the direct economic interest necessary to be considered an interested party eligible to protest the award.

Accordingly, the protest is dismissed.

Ronald Berger

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