

West+part McGray



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Arthur Cotton Moore/Associates, P.C.
File: B-234302
Date: March 9, 1989

DIGEST

Protester is not an interested party to object to selection of another firm for negotiation of an architect-engineering contract where it would not be in line for award even if the other firm were eliminated from the competition.

DECISION

Arthur Cotton Moore/Associates, P.C., protests the selection by the General Services Administration (GSA) of Howard Needles Tammen & Bergendoff (Howard Needles) as the firm with which to negotiate an architect-engineer (A-E) contract for a development study for the Old Executive Office Building in Washington, D.C., under solicitation No. GS11P88EGC0265. The protester contends that Howard Needles may have misstated its qualifications in the standard forms (SF) 254 and 255 that it submitted for the agency's consideration. We dismiss the protest.

Generally, under the selection procedures set forth in the Brooks Act, 40 U.S.C. §§ 541-544 (1982), which govern the procurement of A-E services, and in the implementing regulations at Federal Acquisition Regulation (FAR) §§ 36.00-36.09, the contracting agency must publicly announce requirements for A-E services. An A-E evaluation board set up by the agency evaluates the A-E performance data and statements of qualifications already on file, as well as those submitted in response to the announcement of the particular project, and selects at least three firms for discussions. The board recommends to the selection official, in order of preference, no less than three firms deemed most highly qualified.

044860/138158

The selection official then lists, in order of preference, the firms most qualified to perform the required work. Negotiations are held with the firm ranked first. If the agency is unable to agree with the firm as to a fair and reasonable fee, negotiations are terminated and the second ranked firm is invited to submit its proposed fee. See generally FAR subpart 36.6.

The agency reports that 38 firms responded to its Commerce Business Daily (CBD) announcement for the proposed project. An evaluation board conducted a review of each firm's SF 254 and SF 255 and selected six firms as the most qualified to perform. A separate board then conducted interviews with the six firms. On the basis of these interviews, the board recommended the following firms, in order of preference:

1. Howard Needles
2. Bernard Johnson Incorporated & Beyer
Blinder Belle (Bernard Johnson)
3. Arthur Cotton Moore/Associates
4. Harry Weese & Associates, Ltd.
5. Einhorn, Yaffee, Prescott Architects
6. Burt Hill Kosar Rittelman Associates

The selection official approved the board's recommendation.

The protester objects to the selection of Howard Needles based on its belief that the firm may have misstated its qualifications in its SF 254 and SF 255. GSA argues in response that the protester, as the third-ranked offeror, is not an interested party to protest the selection of Howard Needles because it would not be in line for award even if the top-ranked firm were eliminated from the competition. In addition, the agency states that as a result of the protest it met with Howard Needles and that it is satisfied that the submissions are truthful and accurate.

Our Bid Protest Regulations define an interested party for the purposes of filing a protest as "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). As the agency points out, this generally means that the party would be next in line for award if the challenged offeror were eliminated from the competition. Armament Engineering Co., B-228445 et al., Feb. 8, 1988, 88-1 CPD ¶ 121. Here, Bernard Johnson the second-ranked firm, and not the protester, would be next in line for award (subject to negotiation of a fair and reasonable price, of course) if

the negotiations with Howard Needles were terminated. The protester has not alleged that Bernard Johnson should also be eliminated from the competition, and we therefore agree with GSA that the protester is not an interested party to object to the selection of Howard Needles.

The protest is dismissed.



 Ronald Berger
Associate General Counsel