



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Robert Wall Edge--Reconsideration
File: B-234469.2
Date: March 30, 1989

DIGEST

1. Where protester is in possession of facts that would establish his interested party status under Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1988), but does not include those facts in its protest submission, protester bears the risk of dismissal for lack of interest and, upon reconsideration of the dismissal, General Accounting Office will not consider the information that could have been presented initially.
2. Where record does not indicate that stockholder in unsuccessful offeror firm is authorized to act on behalf of the firm, the stockholder is not an interested party to protest award to another firm under Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1988), which define interested party as actual or prospective offeror; a corporation is a legal entity separate and distinct from its stockholders, and it is the corporation, not the stockholders, that is the prospective or actual offeror on the procurement.

DECISION

Robert Wall Edge, as a major stockholder in Development Research Associates (DRA), requests reconsideration of our March 6, 1989 dismissal of a protest filed under the letterhead of Robert Wall Edge, Senior Human Resource Management (SHRM), against the Department of the Navy's December 21, 1988 award of a contract to Devon and Associates, under request for proposals No. N00600-88-R-3650.

We affirm the dismissal.

As our dismissal notice indicated, a party must be "interested" in order to have its protest considered by our Office. Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551 (Supp. IV 1986); Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1988). CICA and our Regulations define

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an interested party as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. § 3551(1); 4 C.F.R. § 21.0(a). We dismissed the initial protest, which alleged that the awardee had not independently arrived at its price, because neither Mr. Edge nor SHRM had submitted proposals; a firm which does not participate in a procurement, despite having an opportunity to do so, is not an interested party with standing to question the award. See T-L-C Systems, B-230086, Feb. 26, 1988, 88-1 CPD ¶ 204; Syncor Industries Corp., B-224023.3, Oct. 15, 1987, 87-2 CPD ¶ 360.

In his request for reconsideration, Mr. Edge states that the dismissal was erroneous because he in fact filed the earlier protest in his role as the major shareholder in DRA, one of the offerors in the procurement. Mr. Edge argues that, contrary to our notice, he therefore possessed the necessary interest to protest the award to Devon.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. See Professional Medical Products, Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2. Since a protester can only have its protest considered, and thereby have an opportunity to prevail, if it is an interested party, the requirement for a detailed statement of the legal and factual grounds of protest necessarily encompasses information bearing on the protester's interested party status. See id.

Nothing on the face of the initial protest here indicated that it was being filed by a party with the requisite interest in the award; neither Mr. Edge nor SHRM submitted proposals, and the protest submission did not state that the protest was being filed on behalf of DRA or any other firm. As the interest of the protester was not apparent on the face of the submission, and the submission's letterhead reference to SHRM actually clouded the issue, the dismissal was proper.

The new information now presented by Mr. Edge as establishing the requisite interest does not warrant reopening the protest. We have previously held with respect to the timeliness of a protest, another general prerequisite to consideration of a protest, that when a protest appears

untimely on its face, a protester who is in possession of facts that would establish its timeliness, but who does not initially provide those facts to our Office, runs the risk of dismissal and of our refusal to reconsider the matter when the protester subsequently presents them. See World-Wide Security Service, Inc.--Reconsideration, B-225270.2, Mar. 17, 1987, 87-1 CPD ¶ 294; Global Crane Institute--Request for Reconsideration, B-218120.2, May 28, 1985, 85-1 CPD ¶ 606.

We believe the same rule should apply where, as here, a protester's interest in the matter is not apparent on the face of the protest, and the protester fails to provide information in its possession that establishes interested party status. Any other approach would permit a protester to present this material information in a piecemeal fashion and possibly disrupt the procurement process indefinitely. Global Crane Institute--Request for Reconsideration, B-218120.2, supra.

In any event, the information presented as establishing interested party status--the fact that Mr. Edge is the major stockholder in DRA--in fact does not establish that Mr. Edge was entitled to protest on behalf of DRA. It is a general principle that a corporation is a legal entity separate and distinct from its stockholders, and it generally is the corporation, not the stockholders, which is bound by a contract made by the corporation. See generally Engineering and Professional Services, B-219657, B-219657.2, Dec. 3, 1985, 85-2 CPD ¶ 621. Accordingly, it is the corporation itself, not the stockholders, that is the actual or prospective offeror in a procurement and is therefore entitled to file a protest concerning the procurement. See generally Brooks Woolley, Inc., B-231970, Sept. 2, 1988, 88-2 CPD ¶ 211 (prospective supplier is not an interested party since it is not a prospective or actual offeror). There is nothing in the record indicating that Mr. Edge was authorized to protest on behalf of DRA.

The dismissal is affirmed.


James F. Hinchman
General Counsel