

Shimamura



**Comptroller General  
of the United States**

Washington, D.C. 20548

**Decision**

**Matter of:** J. Vinton Schafer & Sons, Inc.

**File:** B-239313

**Date:** August 14, 1990

Joseph C. Kovars, Esq., Blum, Yumkas, Mailman, Gutman & Denick, P.A., for the protester.  
Gary F. Davis, Esq., General Services Administration, for the agency.  
Amy M. Shimamura, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

**DIGEST**

Protester is not an interested party under Bid Protest Regulations to protest conversion of invitation for bids (IFB) to negotiated procurement because it would not be in line for contract award under its theory of how bids should be evaluated and award made under the IFB.

**DECISION**

J. Vinton Schafer & Sons, Inc. protests the rejection of bids under invitation for bids (IFB) No. GS-11P90MKC0120, issued by the General Services Administration (GSA) for the construction of a parking garage and site utilities at the Archives II Building, College Park, Maryland, and conversion of the IFB to a negotiated procurement. Schafer contends that the rejection of bids under the IFB was improper and that a contract for the base bid work and option No. 1 should have been awarded to it.

We dismiss the protest, since Schafer is not an interested party under our Bid Protest Regulations.

The IFB, issued on December 19, 1989, requested a single lump-sum bid for the work. The IFB was amended six times. Amendment No. 3 to the IFB, dated January 18, made various revisions to the specifications and added an option No. 1, which provided for the installation of aluminum grilles on the stand-off mounting outside of and along the face of spandrels and around stair towers. Amendment No. 6, dated

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January 30, established February 9 as the new bid opening date and, among other things, added option No. 2 which called for an alternate precast prestressed concrete framing system.

The bid schedule for the IFB, as amended by amendment No. 6, provided space for prices for the base bid and the options. The amended IFB's supplementary instructions stated:

"3.01 Base Bid: One lump sum bid is required . . .

"3.02 Options: There are two options.

"A. An option is required, stating the amount to be added to or deducted from the Base Bid amount for the inclusion of each of the following additions/deletions to the work, including all adjustments as required by the additions/deletions."

This amended instruction also advised bidders that the low bidder for the purpose of contract award "is the responsible bidder offering the lowest aggregate price for (1) the base bid . . . plus (2) all options designated to be evaluated. The evaluation of options will not obligate the government to exercise the options."

Seven bids were received by bid opening on February 9. Charles H. Tompkins Co. submitted the lowest base bid; Schafer submitted the lowest aggregate bid for the base bid work plus option No. 1; and Donahoe Construction Company submitted the lowest aggregate bid of those bidders who submitted bids on option No. 2, for the base bid work plus both options No. 1 and No. 2.

On February 23, GSA rejected all bids because it found the request for prices on option No. 2 was ambiguous, which caused four bidders not to price that option. Additionally, the agency noted that it was the intention of the government to procure the option No. 2 alternate precast framing system only if it resulted in significant savings to the government, which did not occur. The agency also found that the IFB procedure, which provided for the exercise of any or all options within 90 days after notice to proceed with construction of the parking garage, would have disrupted the orderly progression of work and made it impossible to complete the work, given that option No. 2 was an alternate to the basic work.

At a February 26 meeting with all bidders, GSA announced the rejection of all bids and issued an amendment to the IFB which converted the IFB to request for proposals (RFP) No. GS-11P90MKC0157 "NEG." The amendment also deleted both options, made minor changes to specifications, and requested proposed prices from the seven bidders for the base bid work by March 5.

On February 28, Schafer protested to GSA the conversion of the IFB. Schafer contended that the IFB was improperly converted because GSA could have made award of the base quantity and option No. 1 under the IFB.

Six proposals were received by the March 5 closing date. On April 5, a contract was awarded to Donahoe, who submitted the low-priced proposal; Schafer was the second low offeror. On that same date, GSA denied Schafer's protest. Schafer then protested to our Office on April 16. Schafer contends that since the record establishes that the government did not need option No. 2, but no such determination was made with respect to option No. 1, the government should not have converted the procurement, but instead should have made award of the base bid and option No. 1 to Schafer.

The agency claims that Schafer is not an interested party under our Bid Protest Regulations to protest the conversion of the IFB. We agree. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(2) (1988), and our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1990), a protest may be brought only by an interested party, defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award a contract. In general, a party will not be considered interested where it would not be in line for award even if its protest were sustained. JC Constr. Co., B-229486, Dec. 29, 1987, 87-2 CPD ¶ 640.

Schafer contends that it is an interested party because the IFB permitted GSA to evaluate and make award on the basis of the base bid and any combination of options, and that it was in line for contract award because it was low under one of these combinations, base bid plus option No. 1.

However, as noted above, when the IFB was converted, both options were deleted by the amendment. Although Schafer asserts that Option No. 1 must be a continuing need since there was no specific determination that it was not, as was the case with Option No. 2, we believe that deleting the option by amendment is a sufficient indication that this option is no longer a government requirement. Since, under Schafer's theory, neither option would be for evaluation

under the IFB, Schafer would not be in line for award and, therefore, it lacks the requisite direct economic interest to be an interested party under our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a).

The protest is dismissed.

*John F. Mitchell*  
for Robert M. Strong  
Associate General Counsel