

K. Burkard



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Discount Machinery & Equipment Inc.

File: B-240426.6

Date: January 23, 1991

Joe Press for the protester.

Richard P. Burkard, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Offeror whose proposal is found to be technically unacceptable by General Accounting Office (GAO) decision is not an "interested party" under GAO's Bid Protest Regulations to challenge the acceptability of another offeror's proposal since, even if the protest were sustained, the protester would not be eligible for award.

DECISION

Discount Machinery and Equipment Inc. protests the proposed award of a contract to Omatech Service Ltd. under request for proposals (RFP) No. F09603-88-R-74981, issued by the Department of the Air Force for 25 engine and toolroom lathes. Discount alleges that Omatech's proposal is not technically acceptable.

We dismiss the protest.

The contract for the lathes was originally awarded to Discount on July 5, 1990. Omatech and two other offerors under the RFP filed protests with our Office alleging that the product offered by Discount did not comply with the RFP requirements. We sustained Omatech's protest by decision dated November 20, 1990, Omatech Serv. Ltd., B-240426, B-240426.4, Nov. 20, 1990, 90-2 CPD ¶ 411, 70 Comp. Gen. _____. We stated that the agency improperly accepted Discount's product, which we found did not comply with a specification in the RFP requiring that the lathe offered be one of a manufacturer's current models. We also recommended that the Air Force make award to Omatech if the Air Force determined that Omatech was the next low, technically acceptable offer. The Air Force subsequently terminated Discount's contract.

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Discount alleges that award to Omatech would be improper since the protester asserts that Omatech's machine does not meet all the required specifications.^{1/}

The Competition in Contracting Act of 1984 (CICA) authorizes our Office to decide a protest filed against the award or proposed award of a contract by an "interested party," which CICA defines 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(2) (1988); 4 C.F.R. § 21.0(a) (1990). In order to have the requisite economic interest, a protester must be in line for award if the protest were to be sustained. ISC Defense Sys., Inc.--Recon., B-236597.3, Apr. 5, 1990, 90-1 CPD ¶ 360. Here, the record shows that there are five other offerors, besides Omatech which have submitted offers that have not been found to be unacceptable. Since we have determined that Discount is ineligible for award, we find that Discount is clearly not in line for award even if its protest against award to Omatech were sustained.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel

^{1/} Discount also objects to our denial of its request for reconsideration of our original November 20 decision. By decision, Discount Mach. & Equip., Inc., B-240426.5, Dec. 17, 1990, 90-2 CPD ¶ _____, we denied the request because Discount was aware of the original protest but chose not to participate in it. While Discount asserts that it did participate, our review of the record shows that we did not receive any written submissions from Discount during the protest. We note that Discount could have raised the same arguments as it does here during the previous protest had it chose to participate.