

Gilhooly



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Engineering Resources, Inc.

File: B-241448.2

Date: February 25, 1991

James J. Biers for the protester.
Herbert F. Kelley, Jr., Esq., and Jack B. Patrick, Esq.,
Department of the Army, for the agency.
Kathleen A. Gilhooly, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protester does not have the direct economic interest to be considered an interested party to protest the reasonableness of the cost-technical tradeoff where the protester would not be next in line for award if the protest were sustained.
2. Protest alleging that RFP should have stated anticipated skill mix for RFP's level-of-effort is untimely when not filed prior to closing date for receipt of proposals.

DECISION

Engineering Resources, Inc. (ERI) protests the award of a contract to Atlantic Research Corporation under request for proposals (RFP) No. DAEA18-89-R-0007, issued by the Department of the Army for the operation and maintenance of the Electromagnetic Environmental Test Facility at Fort Huachuca, Arizona. ERI contends that the source selection was not made in accordance with the RFP's evaluation criteria.

We dismiss the protest.

The RFP contemplated the award of a cost-plus-award-fee contract for a base year and 4 option years. The RFP indicated that award would be made to the offeror whose proposal offered the best overall value to the government, with appropriate consideration given to the following evaluation areas listed in descending order of importance: (1) technical, (2) management, and (3) cost realism. The RFP further provided that although cost was an important factor that would be considered, emphasis would be placed on the merits of the technical, management, and cost realism aspects of the evaluated proposals.

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The Army received seven proposals including those of ERI and Atlantic Resources. All were included in the competitive range. Written discussions were conducted and all seven offerors submitted best and final offers. After final evaluation, Atlantic Research's proposal was selected for award since it was found to offer the best value to the government, all factors considered.

ERI initially protested that it should have been selected for award since it submitted a technically acceptable proposal that was more than 27 percent less costly than the awardee's. After ERI was provided with evaluation documentation, which showed its relative rating,^{1/} ERI modified its protest grounds. ERI now asserts that another offeror (not the awardee) should have received the award and that ERI's proposal should not have been included in the competitive range.

Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551; 3553(a) (1988), and our Bid Protest Regulations, 4 C.F.R. § 21.0(a), a protester must be an "interested party" before we will consider its protest. An interested party for purposes of eligibility to protest must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract. A protester is not an interested party if it would not be in line for award if its protest were sustained. See Federal Information Technologies, Inc., B-240855, Sept. 20, 1990, 90-2 CPD ¶ 245.

In our view, ERI is not an interested party to protest the reasonableness of the Army's cost-technical tradeoff decision. ERI's composite score for the three evaluation areas was the lowest of all seven offerors, and its actual proposed cost was the fifth lowest, and its most probable cost was the second lowest. Another offeror, other than the awardee, was higher rated technically than ERI, proposed a lower cost, and was evaluated as having a lower probable cost. In its last submission, ERI states that it is "patently clear" that this intervening offeror should have been awarded the contract and requests that this be done. Thus, even assuming the cost/technical tradeoff decision resulting in award to Atlantic Resources was improper, as ERI contends, ERI concedes there is an intervening offeror, which would be next in line

^{1/} This documentation was provided to ERI after intervention by our Office. See 4 C.F.R. § 21.3(f) (1990).

for award.^{2/} ERI thus lacks the requisite direct and substantial interest with regard to the award to be considered an interested party. See Kaiserslautern Maintenance Group, B-240067, Oct. 12, 1990, 90-2 CPD ¶ 288. In any case, ERI cannot protest an award on behalf of another offeror.

ERI also alleges that the solicitation was defective because it did not adequately define the anticipated skill mix. Since ERI was or should have been aware of this alleged deficiency from the RFP, this protest allegation is untimely under our Bid Protest Regulations, which provide that protests based upon alleged apparent improprieties in a solicitation must be filed not later than the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). Because ERI did not protest this matter until after award, this portion of its protest is dismissed as untimely. See Business Information Management Corp., B-238875, July 17, 1990, 90-2 CPD ¶ 45.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel

^{2/} With regard to ERI's suggestion that its proposal should not have been included in the competitive range, given the gap in final point scores between its proposal and the awardee's, it would appear that including the protester in the competitive range was consistent with Federal Acquisition Regulation (FAR) § 15.609(a), which requires the inclusion in the competitive range of all proposals that have a reasonable chance of being selected for award and which provides that "when there is doubt as to whether a proposal is in the competitive range, the proposal should be included." Here, given that the protester was determined to be technically acceptable, and its most probable cost was the second lowest, the agency acted reasonably in including the protester's proposal in the competitive range. See Modern Technologies Corp.; Scientific Sys. Co.; B-236961.4; B-236961.5, Mar. 19, 1990, 90-1 CPD ¶ 301.