

Ervin
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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Jack Young Associates Inc.

File: B-243633

Date: June 20, 1991

Jack Young for the protester.
John M. Logue, Esq., Defense Logistics Agency, for the agency.
David J. Ervin, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest by firm not in line for award if the protest were sustained is dismissed, since the protester does not have the requisite direct economic interest in the contract award to be considered an interested party under the General Accounting Office Bid Protest Regulations.

DECISION

Jack Young Associates Inc. (JYA) protests the award of contracts to Westbury Knitwear Co. and Mitts Nitts Inc. under request for proposals (RFP) No. DLA100-90-R-0505, issued by the Defense Personnel Support Center (DPSC), Defense Logistics Agency, for men's wool sweaters. JYA argues that the agency improperly evaluated its proposal.

We dismiss the protest.

The RFP, issued on November 8, 1990, as a total small business set-aside, called for 282,210 men's wool sweaters, with a 100 percent mandatory option. The RFP specifically authorized offerors to indicate any minimum or maximum quantity limitations in their offers. The only evaluation factor listed was price. Nine offers were received, seven of which were included in the competitive range. DPSC then decided to treat this acquisition as a modified "best value" procurement, with past performance as the only non-price factor to be evaluated. The RFP was amended on January 28, 1991, to include the instructions and evaluation criteria to be used in the procurement.

Under the amended RFP, offerors were to submit "technical (past performance) and pricing proposals." Technical proposals, under the evaluation factor "Past Performance," were required to include:

"[a] description of the offeror's experience and quality history that demonstrates the ability to manufacture the item under this solicitation in accordance with the Government specification and delivery requirements. This description should include the offeror's record of adherence to contract schedules, contract quality requirements, and overall commitment to customer satisfaction and will be evaluated in accordance with the provisions set forth in Section M of this amendment."

Section M, "Evaluation Criteria and Basis for Award," stated that for this solicitation, "past performance is more important than cost or price." It further provided that "[a]s proposals become more equal in their past performance ratings, the evaluated cost or price becomes more important."

The seven offerors who remained in the competitive range submitted revised proposals in response to the amended RFP on February 8. The offers were rated using adjectival categories of "Highly Acceptable" (HA), "Acceptable," "Marginally Acceptable" (MA), and "Unacceptable." The offerors then submitted best and final offers (BAFO) on February 22. After receipt of BAFOs, the three firms germane to this protest stood in line for award as follows:

<u>Firm</u>	<u>Rating</u>	<u>Price</u>	<u>Quantity Limitation</u>
Westbury Knitwear	HA	\$14.5913	min-50,000; max-120,000
Mitts Nitts	MA	14.4106	None
JYA	MA	14.9713	min-240,000

Awards were made on March 22 to the highest-rated firm, Westbury Knitwear, for its maximum quantity of 120,000, and to Mitts Nitts, the lowest-priced firm, for the remaining quantity of 162,210. JYA then filed an agency-level protest in which it disagreed with its own rating and requested that the agency send it the rating documents for itself and the awardees as well as the complete offers of the two awardees. DPSC sent the requested documents on April 9. JYA filed a protest with this Office on April 12, alleging that the agency had improperly rated its past performance because it failed to apply the evaluation criteria contained in the amended solicitation. Further, the protester argued generally that "pre-award surveys have not been accurate as to the capabilities of the mills awarded contracts in the past." Essentially, JYA argues that no other firm can produce the item in question as well as it can.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(a) (1988), and our Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.1(a)), a protester must qualify as an interested party in order to have its protest considered by our Office. Seals Servs., Inc., B-235523, June 20, 1989, 89-1 CPD ¶ 591. An interested party is defined as an actual or prospective bidder or offerer whose direct economic interest would be affected by the award or failure to award a contract. 31 U.S.C. § 3551(2); 56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R. § 21.0(a)). A protester will not be deemed interested if it would not be in line for award if its protest were upheld. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. Determining whether a party is sufficiently interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151.

Here, JYA contends that DPSC improperly evaluated its past performance. However, even assuming that JYA had received the highest technical rating available, the protester would still not be in line for award due to its stated quantity limitation of "not less than 240,000 units." Given that Westbury also was rated highly acceptable and proposed a lower price than JYA, Westbury would remain in line for award of its maximum specified quantity (120,000 sweaters), leaving a total of 162,210 to be awarded to another offeror. Since JYA qualified its offer with a minimum quantity limitation of 240,000, DPSC would not be able to award the remaining quantity to JYA. The agency would then properly turn to Mitts Nitts, which had no quantity limitation in its proposal, to fulfill the remainder of the contract.

Where, as here, there are intermediate parties that have a greater interest in the procurement than the protester, we generally consider the protester's interest to be too remote to qualify the protester as an interested party. Airtrans, Inc., B-231047, May 18, 1988, 88-1 CPD ¶ 473. Since JYA has not timely contested the technical ratings of the intervening offerors,^{1/} we have no reason to believe that the protester

^{1/} In its comments on DPSC's report, JYA for the first time argues that the technical ratings of the awardees were improper because they allegedly were based on incomplete investigations into Westbury's and Mitts Nitts' past performance. These arguments, however, are untimely. Under our Regulations, a protest must set forth a detailed

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would be in line for award if its protest were sustained. Id.
Accordingly, JYA is not an interested party entitled to
protest.

The protest is dismissed.

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1/(...continued)

statement of the legal and factual grounds of the protest.
56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R.
§ 21.1(b)(4)). Where a protester, in its initial protest
submission, argues in general terms that a procurement was
deficient, and then, in its comments on the agency's report,
for the first time makes out a detailed argument specifying
precisely the alleged procurement deficiencies, the detailed
arguments will not be considered unless they independently
satisfy our timeliness requirements. Julie Research
Laboratories, Inc., B-240885, Dec. 31, 1990, 70 Comp.
Gen. , 90-2 CPD ¶ 526. Since JYA's arguments regarding the
other offerors' evaluations were not raised within 10 working
days of when it knew or should have known the bases of its
protest from the documents it received from the agency on
April 9, we consider these arguments to be untimely. See
56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R.
§ 21.2(a)(2)); Dayton T. Brown, Inc., B-223774.3, Dec. 4,
1986, 86-2 CPD ¶ 642.