



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sharp Construction Company, Inc.

File: B-244682

Date: July 12, 1991

Bill Cosmos Giallourakis, Esq., for the protester.
Catherine M. Evans, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest alleging that solicitation estimated quantities were inaccurate and resulted in materially unbalanced bids is dismissed as untimely where not filed until after bid opening.
2. Protester is not an interested party to challenge contracting officer's acceptance of price reduction from one bidder after bid opening where another bidder would be in line for award if reduction were disallowed.

DECISION

Sharp Construction Company, Inc. protests the award of any contract under invitation for bids (IFB) No. DABT35-91-B-0018, issued by the Department of the Army for maintenance and repair of family housing at Fort Dix, New Jersey. Sharp primarily alleges that the IFB was defective, resulting in materially unbalanced bids.

We dismiss the protest.

According to Sharp, the IFB requested prices based on the agency's workload estimates for 236 different repair tasks. Four firms submitted bids by the June 24, 1991, bid opening. Evaluated total prices of the bids were as follows:

Trataros Construction Co., Inc.	\$1,899,572.50
Maniaros Contracting Corp.	1,920,638.00
Sharp	1,944,315.00
H. Angelo & Co., Inc.	5,486,510.00

Sharp alleges that the IFB workload estimates were defective and that the defective estimates encouraged unbalanced bidding. Specifically, Sharp asserts that the three low bidders--itself included--were familiar with the agency's

actual requirements under prior contracts, and thus were able to structure their line item prices to take advantage of the possibility that the government will order less than the stated quantities of lower-priced items and more than the stated quantities of higher-priced items. Based on the actual bid prices received, Sharp argues, there is a reasonable doubt that award to the low bidder will result in the lowest ultimate cost to the government. See OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271.

As Sharp notes, a bid is materially unbalanced when there is a reasonable doubt that acceptance of a mathematically unbalanced bid--that is, a bid that contains understated prices for some items and overstated prices for other items--will result in the lowest overall cost to the government. OMSERV Corp., B-237691, supra. Here, however, according to Sharp, this doubt arises from the IFB's allegedly inaccurate quantity estimates. Under our Bid Protest Regulations, protests based upon alleged improprieties apparent on the face of a solicitation must be filed by the time designated for bid opening. 4 C.F.R. § 21.2(a)(1) (1991). As Sharp did not protest the alleged defect in the IFB estimates until after bid opening, the protest is untimely. See Executive Court Reporters, Inc., B-243772, May 6, 1991, 91-1 CPD ¶ 444.

Sharp also alleges that the contracting officer improperly allowed Trataros, the apparent successful bidder, to reduce its price after bid opening. (Trataros was the second-low bidder before the reduction.) Under our Regulations, an interested party for the purpose of filing a protest is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). Generally, a party is not deemed to have the necessary economic interest where there are other intervening offerors that would be in line for award if the awardee were eliminated from competition. James McGraw, Inc., B-236974.2, Jan. 24, 1990, 90-1 CPD ¶ 99. Since another bidder and not Sharp would be in line for award if Trataros' reduction were disallowed, Sharp is not an interested party to protest the contracting officer's action. See 4 C.F.R. § 21.1(a); James McGraw, Inc., B-236974.2, supra.

The protest is dismissed.



John M. Melody
Assistant General Counsel