



Comptroller General
of the United States

Washington, D.C. 20548

1461211

Decision

Matter of: Beneco Enterprises, Inc.--Reconsideration

File: B-245895.3

Date: March 13, 1992

Patrick S. Hendrickson, Esq., Howell, Fetzer & Hendrickson, for the protester.
David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Third ranked offeror protesting the award of a contract on the basis that the joint venture awardee is not a small disadvantaged business is not an interested party under Bid Protest Regulations to protest the award, since the protester would not be next in line for the award if the protest were upheld.

DECISION

Beneco Enterprises, Inc. requests reconsideration of our dismissal of its protest of the award under request for proposals No. F41691-91-R-0127, issued by the Department of the Air Force as a small disadvantaged business (SDB) set-aside. Beneco protested that the awardee, a joint venture, was not an SDB. Based on agency information showing that Beneco was the third ranked offeror, we dismissed the protest because Beneco was not next in line for the award and, thus, was not an interested party to protest the awardee's SDB status under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1991).

Beneco argues three bases for its request for reconsideration. First, it states that our Office erroneously held that Beneco was not an interested party because there was a "lower-priced intervening offer." Beneco notes that award was not to be based solely on price and that it is not clear that Beneco was not in line for award since award might, in view of the evaluation factors other than price, be made to other than the lowest priced offeror. Second, Beneco states that our Office incorrectly held that Beneco was not adversely affected economically by its loss of the award, since it lost its investment in its proposal, its bonding capacity during consideration of the proposals, and the

economic benefits that would have accrued had it received the award. Third, Beneco argues that our dismissal was legally erroneous. Beneco argues that our Office has found chambers of commerce, labor unions, and potential suppliers to be interested parties even though they were not actual or prospective bidders or offerors that were in line for award.

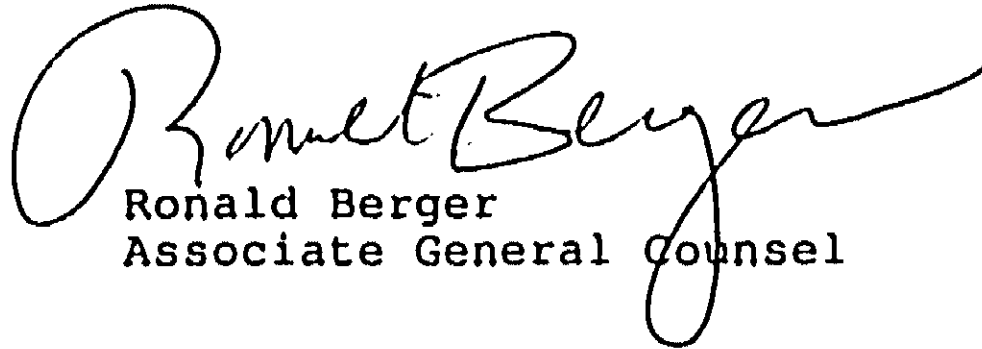
Our dismissal took into account that award was not based solely on price. In this regard, we considered a source selection document furnished by the Air Force in which the source selection official concluded, after considering both the technical and price criteria established in the evaluation factors for award provision of the solicitation, that an offeror other than Beneco was in line for award should the awardee be found ineligible as an SDB. As the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551-3556 (1988) (under which we resolve bid protests), provides that only an interested party may protest a federal procurement and defines an interested party as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or by the failure to award the contract, and as Beneco never protested its own evaluation or ranking, we view the second ranked offeror, not Beneco, as meeting the requirement for direct economic interest since only that firm would directly benefit from the rejection of the awardee.

The "direct economic interest" envisioned by our implementing bid protest regulations is intended to permit the protest of the denial of a contract by the party that has a right to that award. This "economic interest" does not encompass the economic concerns asserted by Beneco. See Clean Air, Inc.--Second Recon., B-242582.4, May 20, 1991, 91-1 CPD ¶ 481, where we stated that the protester's incurring of proposal preparation costs does not in itself provide the requisite economic interest to maintain a protest. If economic interest were read more broadly, then all disappointed bidders or offerors, since they would all be affected similarly by the loss of the contract, would have the right to protest an award. This broader right to protest is clearly not contemplated or granted by CICA. See U.S. v. Int'l Business Mach. Corp., 892 F.2d 1006 (Fed. Cir. 1989).

Finally, although prior to the enactment of CICA we did consider chambers of commerce, labor unions, and potential suppliers to be "interested" even though they were not actual or prospective bidders or offerors, since the effective date of CICA we have uniformly viewed entities such as associations, labor unions, and prospective

suppliers to prime contractors as not interested parties. See Jacksonville Naval Air Station Ass'n, B-227365, June 8, 1987, 87-1 CPD ¶ 581; American Fed'n of Local Employees Local 1513, B-219590.4, June 27, 1986, 86-2 CPD ¶ 14; Nasatka Barrier, Inc., B-234371; B-234578, Mar. 31, 1989, 89-1 CPD ¶ 349.

Accordingly, since Beneco is the third ranked offeror and would not be in line for award if its protest were sustained, we continue to view it as not an interested party to challenge the awardee's eligibility for award.¹ J. T. Constr. Co., Inc.--Recon., B-242845.4, Mar. 2, 1992, 92-1 CPD ¶ ____; James McGraw, Inc., B-236974.2, Jan. 24, 1990, 90-1 CPD ¶ 99. We affirm our dismissal.


Ronald Berger
Associate General Counsel

¹Beneco also contends that our Office also was legally incorrect in ignoring the rights granted to all bidders or offerors to appeal another bidder's or offeror's SDB status by 13 C.F.R. § 124.103 (1991). We simply note that 13 C.F.R. § 124.103 deals with standing to appeal to the Small Business Administration and does not have anything to do with the standing requirements for filing a protest with our Office.