



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Young Sales Corporation

File: B-249336

Date: October 26, 1992

Ronald F. Knigge for the protester,
Herman M. Braude, Esq., Braude & Margulies, for William V.
Walsh Construction, Inc., an interested party.
Herbert F. Kelley, Jr., Esq., Department of the Army, for
the agency.
Ralph O. White, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Offeror with the seventh highest price but highest technical score of the eight offerors in the competitive range lacks the direct economic interest necessary to be an interested party for the purposes of pursuing a bid protest concerning a price/technical tradeoff decision where the offeror's price is far above the price submitted by most offerors and where the two offerors with the second and third lowest prices received virtually equal technical scores as the protester.

DECISION

Young Sales Corporation protests the award of a contract to William V. Walsh Construction, Inc. under request for proposals (RFP) No. MDA946-91-RA020 issued by the Department of Defense, Washington Headquarters Services (WHS), for refurbishment and replacement of the Pentagon roof. Young essentially argues that the agency made an improper price/technical tradeoff decision in selecting Walsh and unreasonably determined that Walsh met the experience requirements in the RFP.

We dismiss the protest on the ground that Young is not an interested party to challenge award to Walsh.

The solicitation contemplated award of a fixed-price and partial requirements-type contract to the offeror whose proposal was deemed most advantageous to the government. Offerors were requested to provide specific examples of prior experience installing, maintaining, and repairing "coal tar and asphalt built-up roofing systems," and slate and sheet metal roofing. The evaluation criteria stated

that technical quality would be more important than price, but that as proposals became more equal in their technical merit, price would become more important.

Eleven proposals were received in response to the solicitation. After review of the proposals by an evaluation panel, and after the award of initial technical scores to each proposal, eight of the proposals were included in the competitive range. Among the eight were the proposals of Young and Walsh.

After negotiations with the offerors in the competitive range, and after receipt of best and final offers (BAFO), the agency again evaluated technical proposals and awarded technical scores. Young received the highest score of the eight competitive range offerors--841 out of 1,000 points available--while Walsh received the lowest score, 677. On the other hand, Young had the second highest price, \$9.1 million, while Walsh had the lowest price, \$5.6 million. Specifically, the breakdown of scores and prices is as follows:

<u>Offeror</u>	<u>Score</u>	<u>Price</u>
Walsh,	677	\$ 5.6 million
Company A	805	6.4 million
Company B	808	6.5 million
Company C	777	6.8 million
Company D	740	6.9 million
Company E	755	8.4 million
Young	841	9.1 million
Company F	794	10.0 million

On June 30, the agency made award to Walsh, and on July 8 Young filed this protest.

In its protest, Young argues that WHS made an improper and unjustified source selection decision inconsistent with the RFP's evaluation plan in awarding to Walsh and unreasonably determined that Walsh met the experience requirements in the RFP. In its comments, Young also argues that WHS failed to hold adequate discussions because it did not effectively convey a warning that Young's price was considered too high. Young further claims that the agency evaluators were unqualified to review proposals for roofing contractors.

As a preliminary matter, we dismiss Young's allegation that discussions were inadequate because the agency's warning regarding Young's price seemed routine. In its filings, Young admits that it was told that its price was excessively high; however, Young states that it believed WHS was simply engaged in routine posturing designed to get a better price. The record shows that seven other companies believed that

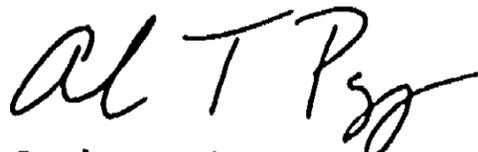
they could perform these services for less than Young. The agency's attempt to convey that information to Young went unheeded. In our view, offerors who disregard agency warnings that prices are excessive do so at their own risk. Given what Young itself states it was told by the agency, we see no basis to find that discussions were inadequate.

With respect to the remaining contentions, Young is not an interested party to pursue these claims. Under the Competition in Contracting Act of 1984 and our Regulations, a protester must qualify as an interested party before its protest may be considered by our Office. See 31 U.S.C. § 3553 (1988); 4 C.F.R. § 21.1(a) (1992). That is, a protester must have a direct economic interest which would be affected by the award of a contract or the failure to award a contract. 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a).

Here, although Young achieved the highest technical rating, its price was far above that of the five lowest-priced offerors. In addition, two of those offerors achieved virtually identical scores as Young. Specifically, Company A at \$6.4 million and Company B at \$6.5 million earned scores of 805 and 808, respectively. While both of these proposals earned scores within 5 percent of Young's score, the offered prices were dramatically lower than Young's price--in fact, these offerors proposed to complete the work for approximately 30 percent less than Young.

Under these circumstances, we find that intervening offerors--especially the second and third low-priced offerors--have a greater stake in this procurement than Young. As a result, we consider Young's interest too remote to qualify it as an interested party here. Four Seas and Seven Winds Travel, Inc., B-244916, Nov. 15, 1991, 91-2 CPD ¶ 463; Airtrans, Inc., B-231047, May 18, 1988, 88-1 CPD ¶ 473. Since nothing in Young's protest would alter the ratings of the intervening offerors, Young would not be in line for award even if its protest allegations were sustained. Accordingly, Young lacks the direct economic interest necessary to be an interested party for pursuing a bid protest.

The protest is dismissed.



Andrew T. Pogany
Acting Assistant General Counsel