



Comptroller General  
of the United States

: : : 789

Washington, D.C. 20548

## Decision

**Matter of:** Lewis & Smith Construction Company

**File:** B-253382

**Date:** September 8, 1993

Herbert J. Lewis, Lewis & Smith Construction Company, for the protester.

Lester Edelman, Esq., Department of the Army, for the agency.

Sylvia Schatz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where protester's proposal under small disadvantaged business (SDB) set-aside was found technically unacceptable, and thus ineligible for award, protester is not interested party eligible to protest cancellation of solicitation and resolicitation on unrestricted basis on ground that the proposals of two of the other SDB offerors on original solicitation improperly were rejected for failure to offer acceptable price; if protest were sustained, one of the other two SDB offerors would be in line for award under original solicitation.

### DECISION

Lewis & Smith Construction Company (L&S), a small disadvantaged business concern (SDB), protests the cancellation of request for proposals (RFP) No. DACA56-93-R-0001, issued as an SDB set-aside by the Army Corps of Engineers, and the agency's subsequent unrestricted resolicitation of the requirement under RFP No. DACA56-93-R-0025.

We dismiss the protest.

The Corps issued the original solicitation on October 27, 1992 for the design and construction of a base engineering complex at Sheppard Air Force Base in Wichita Falls, Texas. The solicitation listed all the technical and cost evaluation factors and their relative importance, and stated that award would be made to the offeror providing the best combination of technical capability and cost reasonableness.

Four proposals, including L&S's, were received on the December 10 closing date. The Corps ultimately determined that L&S's proposal was so deficient that it was technically unacceptable. The agency initially proposed an award to Gual & Associates, Inc., on the basis that its proposal represented the best value to the government. However, L&S and another offeror protested Gual's SDB status to the Small Business Administration (SBA), which ultimately found Gual to be other than an SDB. The Corps determined that L&S's proposal was technically unacceptable and that the remaining two acceptable proposals exceeded the fair market price by more than 10 percent when compared to the government estimate; award thus could not be made to either firm, and the Corps canceled the RFP. See Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 219.506(a).<sup>1</sup> The Corps subsequently withdrew the set-aside on the basis that it failed to receive a proposal from an SDB concern at a price which did not exceed the fair market price by over 10 percent, and resolicited the requirement under the new RFP on an unrestricted basis with the concurrence of the SBA Procurement Center Representative. This protest followed.

L&S seems to argue (it is not entirely clear from the submissions) that resoliciting the requirement on an unrestricted basis--i.e., without the SDB set-aside--was improper because the other two SDB offerors' prices in fact were not excessive. Thus, when the Corps resolicited the requirement after the cancellation, the argument would seem to go, there were in fact two eligible SDBs, and the resolicitation should have been set aside again.

Our Bid Protest Regulations require that a protester be an "interested party," defined as a party having a direct economic interest in the award of a contract or proposed award of a contract, before we will consider its protest. 4 C.F.R. § 21.0(a) (1993). A protester is not an interested party where it would not be in line for award if its protest were upheld. Atrium Bldg. Partnership, 67 Comp. Gen. 93 (1987), 87-2 CPD ¶ 491.

L&S is not an interested party for purposes of this argument. The assertion that the two other SDBs' proposals under the original RFP should not have been rejected is not sufficient to establish a direct economic interest in the matter on the part of L&S. This is because, if we

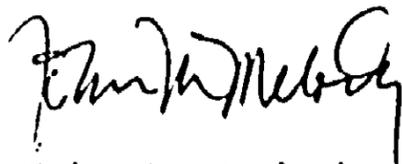
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<sup>1</sup>L&S then filed an agency-level protest, alleging that the agency's cancellation of the solicitation on the basis that the specifications needed revision and that cancellation was in the government's best interest was improper. The agency has not yet responded to this protest.

ultimately agreed that the two firms' proposals were not excessively priced, one of those firms would be entitled to the award under the original RFP. L&S would not be in line for the award, since its proposal was rejected as unacceptable, and the award to one of the other SDBs under the original RFP would negate the competition, and thus any chance L&S would have received the award, under the new RFP. See Training Eng'g Aviation Mgmt. Corp., B-235553, May 26, 1989, 89-1 CPD ¶ 516.

L&S also seems to argue that the Corps impermissibly downgraded its proposal using a point-scoring evaluation scheme not disclosed in the RFP. This argument is without merit. While a solicitation must advise offerors of all technical and cost/price evaluation factors, and their relative importance, the precise scoring method to be used need not be disclosed. See Ebasco Constructors, Inc., et al., B-244406 et al., Oct. 16, 1991, 91-2 CPD ¶ 341.

The protest is dismissed.



John M. Melody  
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