



Comptroller General
of the United States

1211222

Washington, D.C. 20548

Decision

Matter of: CMS, Inc.
File: B-259418
Date: February 15, 1995

DECISION

CMS, Inc. protests the award of a contract to the Hanalei Hotel under request for proposals (RFP) No. N00181-94-R-0121, issued by the Norfolk Naval Shipyard to obtain lodging in the San Diego, California area for agency personnel required to perform work away from the shipyard. CMS contends that the awardee's premises did not contain an automatic sprinkler system required under the RFP.

We dismiss the protest.

The RFP, issued on August 12, 1994, required the submission of prices for a base period (October 1, 1994 through December 31, 1994) and an option period (January 1, 1995 through March 31, 1995). Award was to be made to the responsible offeror whose proposal provided "fair and reasonable prices" and "the best value to the Government." The RFP provided for a site visit to allow agency personnel to evaluate certain enumerated evaluation factors. Nine proposals were received and evaluated. CMS' proposal was evaluated and ranked fifth. CMS' prices were fifth low.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier 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) (1994). A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. Since three offerors other than CMS would be eligible for award before CMS if its protest were sustained, and since CMS has not challenged the eligibility of these offerors for award (nor

timely sought information to pursue any such challenge), CMS lacks the direct economic interest required to maintain a protest.¹


Michael R. Golden
Assistant General Counsel

¹CMS also requests that our Office declare it entitled, pursuant to 4 C.F.R. § 21.6(e), to recover its proposal and protest costs in light of the agency's determination (as stated in the agency report responding to the protest) not to exercise the option under the awardee's contract (since the challenged specification was found to be ambiguous) and to resolicit the requirement. Since CMS is not an interested party to protest the award here, there is no basis for determining that the payment of costs is warranted.