



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: International Training, Inc.

File: B-272699

Date: October 2, 1996

Jacob B. Pompan, Esq., Pompan, Ruffner & Werfel, for the protester.
Dennis J. Gallagher, Esq., Department of State, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not an interested party to protest the failure of a contracting agency to follow sole source acquisition procedures where the solicitation contains restrictive requirements which render the protester ineligible for award and the protester does not challenge these restrictive terms.

DECISION

International Training, Inc. protests request for proposals (RFP) No. S-OPRAQ-96-R-0564, issued by the Department of State for defensive driving training services to be conducted at the contractor's facility. The protester alleges that the procurement does not comply with statute and regulations governing sole source procurements.

We dismiss the protest on the basis that the protester is not an interested party.

The purpose of the training services is to prepare Foreign Service and other personnel "to recognize, avoid, and react to threats and acts stemming from terrorism . . . and other dangerous criminal activity[.]" The RFP required the contractor to provide a training facility that at a location "will not exceed an 80 road mile radius from the U.S. Capitol Building, Washington, DC." The RFP also required that the facility have a road course that includes hills in the road and "natural foliage and/or natural terrain cover and concealment areas . . . to allow for realistic surprise . . . attack and ambush scenarios." The due date for submission of proposals was July 22, 1996.

On July 16, International Training protested to our Office alleging that only one source, BSR, Inc., can satisfy the facility location and road course topography requirements, and thus the procurement must be conducted as a sole source

procurement.¹ International Training does not protest the reasonableness of these requirements, but requests only that our Office find that sole source acquisition procedures were required to be followed.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1994), only an “interested party” may protest a federal procurement. That is, a protester must be 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) (1996). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party’s status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. A protester is not an interested party where it would not be eligible to receive a contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

Here, the protester concedes that its training facilities cannot meet the stated requirements which it did not protest. Therefore, International Training could not be eligible for award either under this RFP or if this procurement were conducted under sole source procedures. Since the protester could not be eligible for contract award were its protest sustained, and has not otherwise protested the terms of the RFP which make it ineligible for award, International Training is not an interested party for the purposes of this protest. See National Customer Eng'g, B-251166, Feb. 9, 1993, 93-1 CPD ¶ 118.

The protester argues, however, that our decision in Sun Refining and Marketing Co.; Barrett Refining Corp., B-239973; B-239973.2, Oct. 17, 1990, 90-2 CPD ¶ 305, establishes the interested party status of a party ineligible for award under the terms of solicitation where, as here, the protester alleges that the contracting agency has improperly failed to conduct the procurement according to sole source procedures. We disagree.

In Sun Refining, the protesters protested the solicitation’s restrictive delivery terms and alleged that the solicitation was an improper de facto sole source procurement. We agreed with the protesters’ assertions that the delivery terms restricted competition to a single source, but also agreed with the contracting agency’s assertion that the restrictive delivery terms were reasonably required to satisfy the agency’s needs. We sustained the protest because a solicitation which by its terms restricts competition to a single source does not allow for full and open competition. In other words, the gist of the protests was that an agency in such circumstances could not proceed with the protested procurement under full and

¹The agency received only one proposal (from BSR) by the proposal due date.

open competition procedures unless it revised the protested delivery terms. Since the protesters would have been eligible to compete for award but for the protested delivery terms, they were interested parties.² See McNeil Technologies, Inc., B-254909, Jan. 25, 1994, 94-1 CPD ¶ 40.

Unlike the protesters in Sun Refining, International Training specifically does not protest the restrictive terms of the RFP,³ but seeks only to have the procurement conducted under sole source procedures in hopes that the resulting agency review of the requirements might prompt the agency to revise these requirements in order to permit International Training to compete. However, since International Training did not challenge the restrictive terms of the RFP, a decision by our Office on this protest cannot directly result in International Training's becoming eligible for, or eligible to compete for award. Thus, International Training lacks the direct economic interest in the outcome of this protest which is necessary to maintain a protest. See Recon. Optical, Inc.; Lockheed Martin Fairchild Sys., B-272239; B-272239.2, July 17, 1996, 96-2 CPD ¶ 21 (speculation about possible future action which an agency might take is not a sufficiently direct economic interest).

The protest is dismissed.

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²Since the record there evidenced that the agency indeed required the restrictive delivery terms and did not intend to revise these terms, we recommended that the agency conduct the procurement using sole source procedures.

³The protester, citing International Training, Inc., B-242254, Mar. 13, 1991, 91-1 CPD ¶ 283, alleges that our Office has previously determined that these restrictive requirements are reasonable, and thus contends that protesting these terms would now be futile. That case involved a protest after award of a contract by the Department of the Army under a similar solicitation for defensive driving training. There, we denied the protest of the agency's evaluation of proposals; although International Training also protested the restrictive requirements, we dismissed that protest issue as untimely. We thus did not consider the merits of whether the requirements were reasonable in that solicitation. Moreover, no protest other than the present one has been filed with our Office concerning the terms of this RFP.