



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ATD-American Co.—Reconsideration

File: B-275926.2

Date: May 19, 1997

Eric Wischnia, for the protester.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester does not have direct economic interest required to be considered interested party to protest evaluation of awardee's proposal and resulting award where, even if protest were sustained, protester would not be next in line for award.

DECISION

ATD-American Company (ATD) requests reconsideration of our January 31, 1997, dismissal of its protest of the award of a contract to BTB Trading, Inc. under request for proposals (RFP) No. 1PI-R-0606-96, issued by the Department of Justice Federal Prison Industries (UNICOR) for the purchase of various sizes of bleached white sheeting material for the manufacture of sheets, pillowcases and napkins.

We deny the request.

The RFP sought proposals for a fixed-price indefinite delivery/indefinite quantity contract for a base year with two 1-year options, and provided that proposals would be evaluated on the basis of past performance, technical, and price factors. Award was to be made to the offeror whose proposal was most advantageous to the government.

Nine offerors responded to the RFP. Based on the evaluation, BTB's proposal was ranked first overall and ATD's proposal was ranked fifth. After award was made to BTB, ATD protested to our Office asserting that the agency incorrectly evaluated past performance, and improperly evaluated price by considering the total prices for the base and option years. ATD also argued that BTB's offer should have been rejected because BTB lacked the financial capacity to perform and could not meet the solicitation requirement to provide domestic goods.

We dismissed the protest because it failed to establish a valid basis for challenging the agency's action. ATD's allegations concerning the agency's evaluation of past performance and price were both based on ATD's misreading of the evaluation criteria. With respect to ATD's allegations that BTB lacked the financial capacity to perform and that BTB had submitted a below-cost offer which indicated an intent to provide non-conforming, non-domestic sheeting material, there is no prohibition on submitting a below-cost offer, and our Office does not review an agency's affirmative determination of responsibility, i.e., that an offeror can perform a contract at the offered price, absent circumstances not present here. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198 at 4.

On reconsideration, ATD argues only that its objection to the agency's failure to consider BTB's financial capability should not have been treated as a responsibility issue. The protester points out that the RFP provided that offeror financial capability to acquire material, equipment and personnel to perform and complete the requirement would be considered under the technical evaluation factor. The protester maintains that BTB is an undercapitalized entity whose financial capability was not appropriately evaluated by the agency.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-56 (1994), as amended by Pub. L. No. 104-106, §§ 4321(d), 5501, 5603, 110 Stat. 186, 674, 698, 700 (1996), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award the contract. Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1997). Determining whether a party is sufficiently interested involves consideration of a party's status in relation to a procurement. Where there are intermediate parties that have a greater interest than the protester, we generally consider the protester to be too remote to establish interest within the meaning of our Bid Protest Regulations. Panhandle Venture V; Sterling Inv. Properties, Inc.-Recon., B-252982.3; B-252982.4, Sept. 1, 1993, 93-2 CPD ¶ 142 at 3; The Law Co., B-248631, Sept. 10, 1992, 92-2 CPD ¶ 165 at 4. A protester is not interested if it would not be in line for award if its protest were sustained. Abre Enters., Inc., B-251569.2, Mar. 16, 1993, 93-1 CPD ¶ 239 at 4.

Here, ATD's proposal was ranked fifth overall. ATD's allegation pertains only to the evaluation of BTB's financial capacity; the protester has not provided any basis to challenge the evaluation of the intervening offerors' proposals. Accordingly, even if our Office found that the agency's evaluation of BTB's proposal was improper,

because there are three intervening offerors ATD would not be next in line for award of a contract. Under these circumstances, ATD is not an interested party to protest the award decision.

The request for reconsideration is denied.

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