



Comptroller General
of the United States
Washington, D.C. 20548

161673

Decision

Matter of: Alaska Marine Lines

File: B-278625

Date: February 2, 1998

DECISION

Alaska Marine Lines (AML) protests request for proposals (RFP) No. N00033-97-R-6627, issued by the Joint Traffic Management Office (JTMO) of the Military Traffic Management Command (MTMC), Department of the Army, to procure ocean and intermodal transportation services between points and ports in the U.S. Mainland, Alaska and Puerto Rico. AML contends that the RFP imposes an unnecessarily restrictive transit time requirement.

We dismiss the protest because AML is not an interested party.

On April 10, 1997, the Military Sealift Command (MSC)¹ issued a class justification and approval (J&A) for other than full and open competition in the procurement of ocean and intermodal transportation services. The J&A provided for the establishment of an award preference in the solicitation and award of ocean and intermodal transportation contracts in favor of participants of the Voluntary Intermodal Sealift Agreement (VISA) program. According to the J&A, VISA participants would be given priority over non-participants in the award of ocean and intermodal transportation contracts.

The RFP incorporated the evaluation preference established in the J&A, pursuant to amendment No. 0004, section C-2, which provided:

The [VISA] program has been approved by the Secretary of Defense (SECDEF) as the primary DOD sealift readiness program. VISA participants receive competitive preference for award of DOD cargo and booking priority applicable to peacetime, exercise and contingency cargo based on their VISA capacity commitments. . . .

¹At the time the justification and approval was issued, the JTMO was an MSC/MTMC organization responsible for contracting for ocean and intermodal transportation of Department of Defense (DOD) cargo. As a result of a reorganization and transfer of functions, JTMO assumed responsibility for the procurement of ocean and intermodal transportation services under MTMC.

According to the agency, offers made by VISA non-participants would not be considered for award under the RFP if the total quantity of the cargo capacity requirements can be met by VISA participants at fair and reasonable prices.

In its November 13, proposal in response to the RFP, AML represented that it was not a VISA participant. At the behest of the contracting officer, AML was provided with an application form to enroll in the VISA program, but did not submit the application. On or about January 23, the contracting officer confirmed that AML was not a VISA participant. The contracting officer further determined that AML's proposal was ineligible for award because an adequate number of VISA participants existed to meet the agency's total requirements under the RFP at fair and reasonable prices. AML has not contested the contracting officer's determination that its proposal is ineligible for award under the RFP because it is not a VISA participant or responded to the agency's request that its protest of the transit time requirements be dismissed because AML is no longer an interested party to maintain this protest basis.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-3556 (West Supp. 1997), 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. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1997). 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 in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

The fact that the appropriate remedy—if a protest against an alleged solicitation defect were sustained—would be resolicitation or an amendment to the solicitation may mean that an offeror could be an interested party even if its proposal would not be in line for award under the challenged solicitation. See Teltara Inc., B-245806, Jan. 30, 1992, 92-1 CPD ¶ 128; Loral Fairchild Corp., B-242957, June 24, 1991, 91-1 CPD ¶ 594. That would be true, however, only where the protest ground directly affected the protester's eligibility for award; in such circumstances, the protester's ineligibility could have been caused by the solicitation defect and thus could not properly be permitted to preclude consideration of the protest. See Teltara Inc., *supra*. On the other hand, where the protester's ineligibility is unrelated to the issue raised in the protest, the protester is not an interested party, regardless of whether resolicitation might otherwise be an appropriate remedy. FLIR Sys., Inc., B-255083, Jan. 24, 1994, 94-1 CPD ¶ 36.

Here, the protester does not challenge the VISA award preference in the RFP, but an unrelated performance specification regarding transit time between ports. Even

if JTMO were to amend the solicitation to correct what AML perceives as an unreasonable transit time requirement, AML's proposal would not be in line for award because the agency requirements can be met by VISA participants. Because the protester's proposal was found ineligible for award for a reason not challenged by the protester and unrelated to the alleged defect in the RFP, the protester would not be in line for award, regardless of any merit in its challenge to the allegedly defective transit time requirements. Accordingly, it is not an interested party eligible to maintain this protest.

The protest is dismissed.

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