

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-186502

DATE: July 19, 1976

MATTER OF: A. Kenneth Bernier and C. J. Willis

DIGEST:

1. Private persons who do not represent any entity participating in questioned procurement, but protest as concerned taxpayers, are not considered "interested parties" under GAO's Bid Protest Procedures since they are not sufficiently affected by procurement.
2. Fact that spouse of protester may lose salary because spouse's employer was not awarded contract, is insufficient reason to regard protester as "interested party." As general policy, GAO is not inclined to develop bid protests filed by employee of unsuccessful bidder or offeror where bidder or offeror itself does not protest.
3. Offeror's responsibility is matter for agency determination, and, in absence of fraud or failure to apply definitive criteria is not for consideration by our Office.

On May 17, 1976, a protest was received from the University of Oklahoma, an unsuccessful offeror, along with "interested party appeals" from A. Kenneth Bernier, Esquire and Reverend C.J. Willis. The protests were against the proposed award to the incumbent Oklahoma Department of Economic and Community Affairs (DECA) of a Department of Health, Education and Welfare (HEW) contract for training and technical assistance for the Head Start Program in the State of Oklahoma under request for proposals OHD-76-3. The University of Oklahoma withdrew its protest on June 22, 1976. However, Messrs. Bernier and Willis, taxpaying citizens "interested generally in the welfare of all our youth and specifically in the welfare of those of our youth eligible for Head Start services," have persisted in their protests, alleging that DECA is not a responsible contractor because of its alleged failure to correct deficiencies noted in a 1973 HEW Monitoring Report.

Section 20.1(a) of our Bid Protest Procedures, 4 C.F.R. § 20.1(a) (1976), provides that a party must be "interested" in order that its protest might be considered. Messrs. Bernier and Willis assert that their right to protest to our Office lies in their status as concerned taxpaying citizens. In addition, Reverend Willis has stated that he is President of the Oklahoma Head Start Parents Association and that his children have participated in the Head Start programs. Mr. Bernier advises that he, too, is a member of child care organizations and that his wife is employed by the University of Oklahoma's Office of Child Development Services, so that the award to DECA deprives her of opportunities to advance her career. While we realize that individuals may be deeply concerned about the outcome of a procurement, these persons may not necessarily be "interested parties" eligible to protest to our Office within the purview of Section 20.1(a).

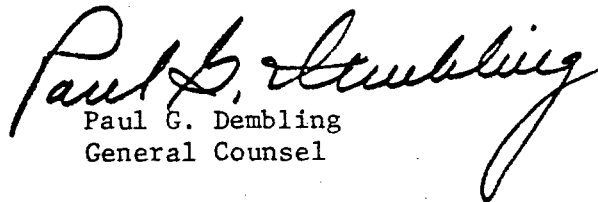
The requirement that a party be "interested" serves to ensure a party's diligent participation in the protest process so as to sharpen the issues and provide a complete record on which the correctness of a challenged procurement may be decided. A protester may well be viewed as possessing a sufficient interest in the award selection in question even though the protester may not or does not choose to bid on the procurement. In the past under different circumstances, our Office has considered protests filed by such concerns as a labor union, a contractor's association, and a Chamber of Commerce. See District 2, Marine Engineers Beneficial Association-Associated Maritime Officers, AFL-CIO, B-181265, November 27, 1974, 74-2 CPD 298; B-177042, January 23, 1973; and 49 Comp. Gen. 9 (1969).

We do, however, require that a protester be sufficiently affected by the procurement. Recently we held that a private individual who did not represent any concern which might have participated in the procurement, but who asserted "the assumed 'right of any citizen' to lodge a formal protest" with this Office did not qualify as an "interested party" as contemplated by Section 20.1(a). Kenneth R. Bland, Consultant, B-184852, October 17, 1975, 75-2 CPD 242. The effect of this procurement upon each of the protesters here as individual taxpayers is in our view too tenuous for them to be considered "interested parties." Although we have considered Mr. Bernier's statement that the award to DECA adversely affects his wife's duties and income, we believe this is not sufficient reason to regard him as an "interested party." As a general policy, we are not

inclined to develop protests filed by individual employees of disappointed bidders or offerors where the bidder or offeror itself does not protest.

Furthermore, the nature of the protests is such that they are not for consideration by this Office. We no longer review bid protests involving agencies' affirmative determinations of responsibility, except for actions by procurement officials which are tantamount to fraud or where the solicitation contains definite responsibility criteria which allegedly have not been applied, neither of which exceptions apply here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Great Lakes Dredge and Dock Company, B-185493, January 15, 1976, 76-1 CPD 32.

Therefore, the protests are dismissed.


Paul G. Dembling
General Counsel