

**DECISION**

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

29011

**FILE:** B-215061**DATE:** August 6, 1984**MATTER OF:** Surgical Instrument Company of America**DIGEST:**

1. Protest from firm not in line for award if protest is upheld is dismissed because protester does not have requisite direct and substantial interest with regard to award to be considered an "interested party" under GAO Bid Protest Procedures.
2. GAO will not review affirmative responsibility determinations except when there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that a definitive responsibility criterion has not been met.

Surgical Instrument Company of America protests the award of a contract to American V. Mueller Co. under invitation for bids No. DLA120-83-B-1778, issued October 8, 1983, by the Defense Personnel Support Center, Philadelphia, Pennsylvania. We dismiss the protest.

The protester contends that V. Mueller should not have been awarded the contract for intestinal forceps because its bid failed to show compliance with solicitation provisions implementing a Department of Defense Appropriation Act requirement that specialty metals be produced in the United States. The protester maintains that V. Mueller may obtain the steel used in manufacturing its supplies from a source prohibited by the Act; it also alleges that the awardee has not certified in its bid that the required steel would be from West Germany, which by the date of award, April 20, 1984, was considered a qualifying foreign source.

029679

Although we requested and reviewed a report from the contracting agency, we will not consider the protest. The report indicates that Surgical Instrument Company is the fifth-low bidder after evaluation of bids in accordance with the Buy American Act procedures set forth in Defense Acquisition Regulation § 6-104.4, reprinted in 32 C.F.R. pts. 1-39 (1983). The report further indicates that the low bid was rejected because evaluation of a pre-award sample led to a determination that the bidder lacked responsibility. Accordingly, award was made to the next-low bid of V. Mueller.

We find that Surgical Instrument Company is not eligible to maintain this protest. Under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1984), a party must be "interested" in order to have its protest considered by our Office. Determining whether a party is sufficiently interested involves consideration of its status in relation to the procurement. Pluribus Products Inc., B-210444, March 7, 1983, 83-1 CPD ¶ 226.

Here, even assuming that V. Mueller's low bid should have been rejected due to the source of its specialty metals, it appears that award could have been made to the third- or fourth-low bidder, and Surgical Instrument Company would not be next in line for award. Under these circumstances, we must view the firm as not having the requisite direct and substantial interest to make it an interested party with regard to this procurement. Logistical Support, Inc., B-208449.2, Sept. 14, 1983, 83-2 CPD ¶ 322; Nicolet Analytical Instruments, B-210851, April 26, 1983, 83-1 CPD ¶ 456.

In this regard, Surgical Instrument Company contends that it is an interested party because the third- and fourth-low bidders have not yet been evaluated and could be found to be nonresponsible. The contracting officer, however, states that both these bidders are reliable suppliers and have previously furnished to the government the items involved in this procurement and items of a similar nature. Thus, it does not appear that either would be determined nonresponsible. In the absence of such a determination, the fifth-low bidder has no basis to claim the award. As for whether these bidders actually are responsible, this is not a matter

for our Office to determine. We review affirmative responsibility determinations only when there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that a definitive responsibility criterion has not been met. Lake Shore Inc., B-213877, Dec. 22, 1983, 84-1 CPD ¶ 14. Neither exception is applicable here.

The protest is dismissed.

*Richard R. Pearson*

For Harry R. Van Cleve  
Acting General Counsel