

# DECISION



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

FILE: B-222436

DATE: May 30, 1986

MATTER OF: Hawthorne Services, Inc.

## DIGEST:

1. Protest challenging cost realism of awardee's proposal by offeror not in line for award if the protest is sustained is dismissed since the protester lacks the direct and substantial interest with regard to the contract award to be considered an interested party.
2. Competition in Contracting Act of 1984 permits contracting agency to allow contract performance to proceed despite pendency of a protest against the contract award upon a determination that urgent and compelling reasons exist and notification to the General Accounting Office that such a determination has been made.

Hawthorne Services, Inc. protests the award of a cost-plus-award-fee contract to Vinnell Corporation under request for proposals (RFP) No. DAAD09-85-R-0035 issued by the Army for base support services at Dugway Proving Ground, Utah. Hawthorne challenges the cost realism of Vinnell's proposal. Because Hawthorne is not an interested party to maintain this contention, we dismiss the protest.

The RFP required the contractor to furnish the necessary management, administration, personnel and data services to perform base support operations at Dugway Proving Ground for a one-year base period with four one-year options. Section M.1.1 of the RFP stated that award would be based on "the best overall proposal with appropriate consideration given to the major areas of technical and cost/price." Technical and cost elements were given equal weight in evaluating proposals.

The Army received three initial proposals under the RFP, from Hawthorne, Vinnell and Schneider Services International. As part of the technical evaluation, the Army advised each offeror of areas in which its proposal

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could be clarified and allowed the offerors to submit additional information. Schneider Services and Vinnell were ranked first and second by the Army technical panel and received relatively close technical scores. Hawthorne ranked third with a technical score significantly lower than the other two offerors. The technical panel concluded, however, that all three proposals were technically acceptable.

The Army also requested the Defense Contract Audit Agency to examine the offerors' cost proposals and later conducted its own analysis of the proposals. Discussions limited to the cost proposals then were conducted with each offeror, followed by the submission of best and final offers. Vinnell submitted the lowest cost proposal, followed by Schneider Services and Hawthorne, both of whose cost proposals were significantly higher than Vinnell's. Award then was made to Vinnell as the offeror with the second highest technical score and the lowest proposed cost.

Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(a) (Supp. II 1984), and our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1985), a protester must be an "interested party" before we will consider its protest. A protester is not an interested party if it would not be in line for award if its protest were sustained. Gracon Corp., B-219663, Oct. 22, 1985, 85-2 CPD ¶ 437. Here, as discussed above, Hawthorne received the lowest technical score of the three offerors and proposed the highest cost. Thus, even assuming the award to Vinnell was improper as Hawthorne contends, Schneider, the offeror with the highest technical score and a cost proposal lower than Hawthorne's, would be next in line for award. Hawthorne has not challenged the Army's evaluation of Schneider's offer. Accordingly, even if Hawthorne's protest regarding the award to Vinnell were sustained, Schneider, not Hawthorne, would be next in line for award. Hawthorne thus lacks the requisite direct and substantial interest with regard to the award to be considered an interested party. Lynalelectron Corp.--PacOrd Inc., B-217472, Mar. 18, 1985, 85-1 CPD ¶ 321.1/

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1/ While the Army argued that Hawthorne is not an interested party in its report on the protest, Hawthorne failed to respond to this issue in its comments on the report.

In its comments on the Army's report, Hawthorne also challenges the Army's decision to proceed with performance under the challenged RFP despite the pending protest. Hawthorne contends that the Army has failed to show the "urgent and compelling circumstances" required under CICA, 31 U.S.C. § 3553(d)(2)(A)(ii), to justify proceeding with performance while a protest is pending. CICA provides, however, that a contracting agency need only make a determination to go forward with performance and inform us of its determination. 31 U.S.C. § 3553(d)(2). The Army has done that here.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger  
Deputy Associate  
General Counsel