



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Priscidon Enterprises, Inc.
File: B-230035
Date: March 18, 1988

DIGEST

1. Contracting officer properly may make an award 10 working days after the Small Business Administration (SBA) receives a size status protest against a prospective awardee when the SBA has issued no decision on the protest within that time.
2. Protester which is not the low bidder is not an interested party to maintain a protest that its bid was improperly rejected as nonresponsive where award properly was made to the low bidder, since protester would not be in line for award even if its protest were sustained.

DECISION

Priscidon Enterprises, Inc., as agent for the LeBaron Hotel Corporation, protests the rejection of its bid as nonresponsive and the award made to the Howard Johnson Market Center under U.S. Army Engineer District (Fort Worth, Texas) invitation for bids No. DACA63-87-B-0231, issued as a total small business set-aside for providing lodging, meals, and transportation for Army personnel during the 1988 calendar year. Priscidon contends that Howard Johnson was not eligible for award under the set-aside since it is a large business. It further challenges the Army's rejection of LeBaron's bid based on its determination that the agency agreement between Priscidon and LeBaron constituted an impermissible contingent fee arrangement.

We dismiss the protest.

Bids were opened on December 1, 1987. Howard Johnson's bid was low; LeBaron's was fourth low. By letters to the contracting officer dated December 3, Priscidon protested that Howard Johnson and the second and third low bidders were not small businesses. The contracting officer furnished

041603/135330

these protests on December 7 to the Small Business Administration (SBA) for its consideration. Subsequently, the contracting officer determined the second and third low bids to be nonresponsive. Because the SBA had not rendered a decision regarding Howard Johnson's small business status as of December 28, the contracting officer awarded the contract to Howard Johnson and notified LeBaron that its bid was considered nonresponsive due to its contingent fee arrangement with Priscidon. Award of the new contract to Howard Johnson was considered necessary because the prior lodging-meals-transportation contract was to expire on December 31. The SBA was notified of both these actions on December 28.

Under Federal Acquisition Regulation (FAR) § 19.302(h)(1) when a size status protest has been filed and forwarded to the SBA, a contracting officer may not make an award until either the SBA resolves the matter or 10 working days elapses after the SBA's receipt of the protest without any decision having been made by the SBA, whichever occurs first. Here, the SBA received Priscidon's protest on December 7 and no action was taken on it as of December 28, more than 10 working days later. Since the contracting officer's award of the contract thus was consistent with the FAR, we have no legal basis to object to the award to Howard Johnson. K-Son Construction Co., B-225207, Feb. 10, 1987, 87-1 CPD ¶ 145. The Army states that the SBA has closed its file on the size status protest. In any event, even if the SBA now were to find that Howard Johnson is a large business, that determination would apply prospectively only; it would not affect the current award. Id.

Since the award to Howard Johnson is proper, we will not consider Priscidon's contention that its bid was improperly rejected as nonresponsive. To be eligible to pursue a protest, a protester must be an interested party within the meaning of our Bid Protest Regulations, 4 C.F.R. § 21.0(a) and 21.1(a) (1987). A protester lacks standing as an interested party where, as here, it would not be in line for award even if its protest were sustained. First Federal Data Services Co., B-224183.2, Feb. 18, 1987, 87-1 CPD ¶ 179. Accordingly, Priscidon is not an interested party to have its protest considered on the merits.

The protest is dismissed.

Michael R. Ladd
for
Ronald Berger
Deputy Associate
General Counsel