

Guy



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Flow Systems, Inc.
File: B-233394
Date: March 9, 1989

DIGEST

Third low bidder under step two of a two-step sealed bid acquisition is not an interested party, under General Accounting Office's Bid Protest Regulations, to protest the acceptability of the low bidder's step-one technical proposal where the protester does not also challenge the acceptability of the second low bidder's offer.

DECISION

Flow Systems, Inc., protests the Department of the Air Force's award of a contract to CME, Inc., under invitation for bids No. F33659-88-BA017, step two of a two-step sealed bid acquisition, for gas flowmeter calibrators. Flow Systems alleges that CME's technical proposal in response to the step-one request for technical proposals (RFTP) failed to comply with mandatory specification requirements.^{1/}

We dismiss the protest.

Gas flowmeter calibrators are used to calibrate flowmeters, which measure the volume of gas flowing through a conduit. The step-one RFTP required offerors to describe in detail the calibration system they were offering and to explain how it would comply with each of the functional and performance requirements in the applicable purchase description. Among other requirements, that specification called for gas flow

^{1/} Two-step sealed bidding is a hybrid method of procurement that combines elements of sealed bidding and negotiations. Step one is similar to a negotiated procurement in that the agency requests technical proposals, without prices, and may conduct discussions. Step two consists of a price competition among those firms which submitted acceptable proposals under step one. A.R.E. Manufacturing Co., Inc., B-224086, Oct. 6, 1986, 86-2 CPD ¶ 395.

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to be measured with an accuracy (maximum uncertainty) of plus or minus 0.2 percent, and required that the calibrator be capable of repeating a prior reading within plus or minus 0.03 percent of the reading.

The Air Force received technical proposals from six offerors in response to the RFTP; after evaluation by Air Force technical and contracting personnel, all proposals were found to be technically acceptable. In response to the step-two IFB, CME submitted the low bid (\$930,075), Volumetrics, Inc., the second low bid (\$1,078,875), and Flow Systems the third low bid (\$1,281,670). Upon learning of the subsequent award to CME, Flow Systems protested to our Office, contending that the calibration system proposed by CME does not comply with the specification requirements for accuracy and for repeatability of prior readings.

Under Our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1988), 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 the party's status in relation to the procurement. Where there are intermediate parties that have a greater interest than the protester, we generally consider the protester to be too remote to establish interest within the meaning of our Bid Protest Regulations; a party will not be deemed interested where it would not be in line for award even if its protest were sustained. See Airtrans Inc., B-231047, May 18, 1988, 88-1 CPD ¶ 473.

Here, the Air Force found the technical proposal submitted by the intervening second low bidder, Volumetrics, to be technically acceptable, and Flow Systems has not challenged the acceptability of Volumetric's offer. Thus, it appears that Volumetrics, and not Flow Systems, would be in line for award if Flow System's protest were sustained. Under these circumstances, Flow Systems is not an interested party to protest the award to CME.

In any event, we find no basis to question the determination of acceptability made by the Air Force. Although Flow Systems has submitted a detailed technical analysis in support of its protest, the RFTP specifically cautioned that the government might make a final determination of acceptability solely on the basis of the proposals as submitted; it did not require offerors to conduct actual demonstrations of their systems, and did not require submission of detailed technical data establishing their systems' capabilities. CME's proposal described its system, stated that it would meet each of the functional and performance requirements, and explained in detail how it

would comply with the requirements, including those for accuracy and repeatability. Based upon CME's proposal, the Air Force's technical evaluators determined that the CME system possessed the required performance capabilities. This determination appears to be reasonable. See George E. Failing Co., B-233207, Feb. 24, 1989, 89-1 CPD ¶ ; Gichner Iron Works, Inc., B-230009, May 16, 1988, 88-1 CPD ¶ 459

The protest is dismissed.

Michael A. Jalden
for

Ronald Berger
Associate General Counsel