



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: RRRS Enterprises, Inc.--Reconsideration

File: B-241512.3

Date: June 10, 1991

Michael R. Weremblewski, Esq., The Militello Law Office, P.C., for the protester.

M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office denies request for reconsideration of decision dismissing protest allegation challenging contract award, where protester was found technically unacceptable and presented no timely argument that would warrant disturbing the agency's conclusion in this regard, and is, therefore, not an interested party since it would not be in line for award if allegation were resolved in its favor.

DECISION

RRRS Enterprises, Inc. requests reconsideration of our decision, RRRS Enters., Inc., B-241512; B-241512.2, Feb. 12, 1991, 91-1 CPD ¶ 152, denying in part and dismissing in part its protest against the rejection of its offer as unacceptable and award of a contract to North Operations and Maintenance, Inc. under request for proposals (RFP) No. DAKF36-90-K-0004, for management and operation of a personal property shipping office.

In its original protest, RRRS argued that North was given an improper competitive advantage over RRRS by being notified of the availability of the incumbent contractor's personnel, and that North lacked the required experience for award. We denied the first ground of protest on the basis that there was no evidence in the record that the agency had given North advance notice of the availability of incumbent personnel. We dismissed the second ground on the basis that RRRS was not an interested party because the agency determined its proposal to be technically unacceptable and RRRS presented no timely argument that would warrant disturbing this determination. As there also was no unequal competition as RRRS had alleged, RRRS would not have been in line for award of the contract even if it would prevail in its protest of North's experience;

the third offeror whose proposal was determined technically acceptable, would be in line for award.

In its reconsideration request, RRRS maintains that it is an interested party to protest for purposes of raising the issue of the agency's evaluation of North's experience. The basis for its interest, the protester asserts, is that it has standing to act as a private attorney general in order to prevent the award of a contract through arbitrary action. In this regard, RRRS asserts that it has standing because the agency caused it injury in fact and the injury was within the zone of interest to be protected by the competitive bidding regulations.

The Competition in Contracting Act of 1984 (CICA) authorizes our Office to decide a protest by an "interested party," which CICA defines as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. § 3551(2) (1988); 4 C.F.R. § 21.0(a) (1991). In order to have the requisite economic interest, a protester challenging an award must be in line for award if the protest is sustained. See State Technical Inst. at Memphis, 67 Comp. Gen. 236 (1988), 88-1 CPD ¶ 135. Since RRRS was determined to be technically unacceptable, and RRRS presented no timely argument that would warrant disturbing the agency's conclusion in this regard, it was not in line for award.

The standard for standing cited by RRRS applies to disappointed bidders on government procurements seeking judicial review under the Administrative Procedure Act, 5 U.S.C. § 702 (1988); this is an extension of the traditional basis for standing beyond direct economic injury. See United States v. International Business Machs. Corp., 892 F.2d 1006 (Fed. Cir. 1989). Again, under CICA, Congress has deliberately and substantially narrowed the class of persons entitled to bring a protest before our Office; consequently, the standard cited by the protester is not applicable to our bid protest forum.

The request for reconsideration is denied.


James F. Hinchman
General Counsel