



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Childers Construction Company

File: B-243379.2

Date: September 27, 1991

Pete White, Esq., White and Carrier, for the protester.
Winfred W. Kelly, for Bilton, Inc., an interested party.
Joseph M. Goldstein, Esq., Department of the Air Force, for
the agency.
Jacqueline Maeder, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Offeror whose proposal was ranked fourth, based on cost and technical evaluation, is not an interested party to question eligibility for award of highest ranked offeror where protester does not question eligibility of intervening offerors and would not be in line for award if the issues it raises were resolved in its favor.

DECISION

Childers Construction Company protests the Air Force's award of a contract to A.W. & Associates, Inc./3M Masonry, a joint venture, under request for proposals (RFP) No. F08650-90-0011 for Simplified Acquisition of Base Engineering Requirements (SABER) for the Eastern Space and Missile Center located at Patrick Air Force Base, Florida. The SABER program provides for small-to-medium size maintenance and repair and minor construction projects in support of base civil engineers.

We dismiss the protest.

The RFP was issued on October 5, 1990, as a small disadvantaged business (SDB) set-aside. Ten of the 11 proposals submitted were determined to be in the competitive

range and all 10 firms submitted best and final offers (BAFOs). The proposals were evaluated and ranked by a five-member source selection evaluation team on technical merit and price.

On February 27, 1991, the contracting officer executed a written determination in accordance with Federal Acquisition Regulation (FAR) § 15.1001(b)(2) that the urgency of the requirement necessitated award without delay prior to notification of unsuccessful offerors. The determination stated that the award must be made to protect the public interest because the work to be performed, maintenance and repair projects for existing base facilities, was to eliminate a possible safety hazard. On March 8, award was made to A.W., on the basis that its proposal provided the best overall value to the government.

After timely filing an initial protest with the agency, Childers protested to our Office on June 11, arguing that award to A.W. was improper because A.W. does not qualify as an SDB and falsely self-certified as an SDB, and that the pre-award notice requirement, which would have permitted Childers a meaningful opportunity to challenge A.W.'s SDB status, was circumvented by the agency because there was no real urgency in procuring the services.

Childers is not an interested party to protest the SDB status of the awardee. The record demonstrates that Childers' proposal was rated fourth on technical merit, was sixth low on cost, and overall was ranked fourth. The intervening proposals which were ranked second and third on technical merit were both lower in cost than Childers' proposal. Thus, even if we were to sustain Childers' protest that A.W. is not a disadvantaged business and that the lack of a pre-award notice prejudiced Childers' ability to challenge A.W.'s status, there are two other intervening offerors which would be in line for award ahead of Childers. Childers does not question the eligibility of any of the other offerors, and contends that it is an interested party based simply on having submitted an offer. This argument misconstrues the interested party requirement.

Under the Competition in Contracting Act of 1984 and our regulations, a protester must qualify as an interested party before its protest may be considered by our Office. See 31 U.S.C. § 3553 (1988); 4 C.F.R. § 21.1(a) (1991). That is, a protester must have a direct economic interest which would be affected by the award of a contract or the failure to award a contract. 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a). Here, given Childers' overall rating of fourth, and the nature of

its protest, Childers does not have the direct economic interest necessary to qualify as an interested party under our regulations. See Kaiserslautern Maintenance Group, B-240067, Oct. 12, 1990, 90-2 CPD ¶ 288; Federal Information Tech., Inc., B-240855, Sept. 20, 1990, 90-2 CPD ¶ 245.

The protest is dismissed.

A handwritten signature in dark ink, appearing to read "Paul I. Lieberman", with a long horizontal stroke extending to the right.

Paul I. Lieberman
Assistant General Counsel