



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rite-Way Services, Inc.

File: B-245021; B-245035

Date: October 2, 1991

Theodore M. Bailey, Esq., for the protester.
Ralph B. Wahlberg for Teltara Inc., and Arthur Kalpin for Shifa Services, interested parties.
Joseph M. Goldstein, Esq., and Richard C. Phillips, Esq., Department of the Air Force, for the agency.
Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

Protester is not an interested party at this time to challenge the evaluation of its proposal where the procurement has been reserved for exclusive small business participation and a regional office of the Small Business Administration (SBA) has determined that the protester is other than small for purposes of this procurement, although the regional office size determination is currently being appealed to SBA's Office of Hearings and Appeals.

DECISION

Rite-Way Services, Inc. protests the rejection of its offers submitted in response to requests for proposals (RFP) Nos. F33600-91-R-0032 (0032) and F33600-91-R-0038 (0038), issued by the Department of the Air Force, for Hospital Aseptic Management Services at England (0032) and Malstrom (0038) Air Force Bases.

We dismiss this protest because the protester, an other-than-small business, is not an interested party to challenge a contracting agency decision in a procurement that has been set aside for small business.

After submitting initial proposals and best and final offers in response to both of the above-referenced solicitations, Rite-Way was notified, by letter dated July 26, 1991, that both its proposals were found technically unacceptable. On August 1, Rite-Way challenged the evaluation of its proposals in a protest filed with our Office.

During the pendency of this protest, and after receiving allegations from at least two other offerors asserting that Rite-Way was not eligible to participate in this procurement, the contracting officer protested Rite-Way's size status to the Dallas Regional Office of the Small Business Administration (SBA). On September 13, 1991, Rite-Way received written notification from the Regional Office that Rite-Way had been found other-than-small for purposes of participating in the instant procurements. Based on this decision, the Air Force has requested dismissal of Rite-Way's protests on the grounds that Rite-Way is not an interested party to contest this procurement.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. 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. 4 C.F.R. § 21.0(a) (1991). A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

Rite-Way argues that our Office should delay dismissal of its protest because it has filed an appeal of the Regional Office decision to SBA's Office of Hearings and Appeals (OHA). According to Rite-Way, the Regional Office decision is not final until OHA rules on the appeal.

Rite-Way misconstrues the effect of a determination by a regional office of SBA. Formal size determinations by regional offices become effective immediately and remain in effect unless and until reversed by OHA. 13 C.F.R. § 121.1606(h) (1991). Here, since the effect of the determination of the Dallas Regional Office is to render Rite-Way ineligible for award under this small business set-aside procurement, we dismiss Rite-Way's protest on the basis that it is not currently an interested party. See East West Research, Inc., B-244174, July 8, 1991, 91-2 CPD ¶ 34. Should OHA reverse the Regional Office determination, Rite-Way may reinstate its protest at that time.



Andrew T. Pogany
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