



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Days Inn
File: B-246280
Date: November 19, 1991

Richard Majdanski for the protester,
Herbert F. Kelley, Jr., Esq., and Capt. Gerald P. Kohns,
Department of the Army, for the agency,
Guy R. Pietrovito, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest of the rejection of the protester's bid as nonresponsive is dismissed where the protester, as the third-low bidder, would not be in line for award if its protest were sustained because the protester did not challenge the eligibility of the low bidder for award and the low bidder was determined to be responsive, responsible and otherwise eligible for award.

DECISION

Days Inn, Phoenix, Arizona, protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DABT63-91-B-0035, issued as a small business set-aside by the Department of the Army for meals and lodging for military entrance processing station applicants at Fort Huachuca, Arizona.

We dismiss the protest.

The Army received three bids, including bids from Travelodge MetroCenter and Days Inn, in response to the IFB. Travelodge submitted the low bid, while Days Inn's bid was third-low. Days Inn timely filed an agency-level protest, contesting the responsiveness of Travelodge's bid and the size status of the second-low bidder.¹ The Army dismissed Days Inn's agency-level protest on the basis that Days Inn

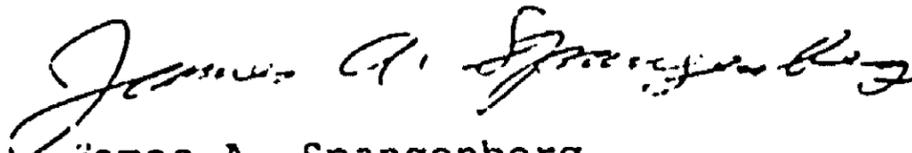
¹While Travelodge was determined to be responsive and responsible, the contracting officer protested the size status of Travelodge to the Small Business Administration (SBA). See Federal Acquisition Regulation § 19.302(b). The agency has informed us that SBA determined that Travelodge was a small business for this procurement.

was not an interested party because Days Inn's bid was nonresponsive. In this regard, Days Inn's bid was found not to include all the required IFB representations and certifications. Days Inn protested the rejection of its bid to our Office.

Under our Bid Protest Regulations, only an "interested party" may protest a federal procurement, 4 C.F.R. § 21.1(a) (1991). That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised; the benefit or relief sought by the protester; and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. 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.

Here, while Days Inn protests the rejection of its bid as nonresponsive, it has failed to protest to our Office the eligibility for award of Travelodge, other than asserting that Travelodge is not a small business. Days Inn had earlier protested to the agency the responsiveness of Travelodge's bid, but after the Army dismissed the agency-level protest, Days Inn did not continue its protest of this issue. Instead, Days Inn protests the rejection of its own bid to our Office and argues that it is an interested party to protest this issue because neither Travelodge nor the second-low bidder are small businesses for this procurement. SBA, however, has determined, in response to a protest from the contracting officer, that Travelodge is eligible for award as a small business under the IFB. Accordingly, inasmuch as Travelodge has been found responsive and responsible (which Days Inn had not protested to our Office) and since Days Inn would not be in line for award if its protest were sustained, the protester lacks the direct economic interest required to maintain a protest, and it does not qualify as an interested party under our Bid Protest Regulations.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel