



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: C.E.R., Inc.
File: B-249360
Date: October 30, 1992

Stephen Steeger, Esq., Lyon and McMahon, for the protester.
Joel S. Rubinstein, Esq., Sadur, Pelland & Rubinstein, for
W.M. Schlosser Company, Inc., an interested party.
Dennis Mullins, Esq., and Manuel Oasin, Esq., General
Services Administration, for the agency.
Barbara C. Coles, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging award of contract on basis that
awardee's bid was nonresponsive is dismissed where protester
submitted the third low bid and, thus, would not be in line
for award because the second low bid--contrary to the
protester's contention--is responsive.

DECISION

C.E.R., Inc. protests the award of a contract to W.M.
Schlosser Company, Inc. under invitation for bids (IFB)
No. GS-03P-92-DXC-0021, issued by the General Services
Administration (GSA) for renovations of the Edward Garmatz
Courthouse in Baltimore, Maryland. C.E.R., the third low
bidder, contends that it is entitled to award because
Schlosser's low bid and the second low bid were nonrespon-
sive because both bids failed to include required
subcontractor listing information.

We dismiss the protest.

The solicitation required, among other things, that the
bidder submit as a part of its bid a list of major subcon-
tractors "proposed for use on this [p]roject"; the IFB
stated that:

"[T]he major subcontractor list shall include at a
minimum information concerning these areas of
work: (1) mechanical, (2) electrical, (3) fire
protection, (4) elevator, (5) steel fabricator
erector; (6) millwork; and (7) asbestos removal."

The solicitation also stated that the general contractor and major subcontractor qualifications "shall be considered as a firm part of the bid . . . and shall not be changed subsequent to award."

Bidders were required to submit the following information pertaining to their proposed subcontractors: (1) the subcontractor's name; (2) telephone number; (3) point of contact; and (4) previous construction experience with the general contractor.

GSA received six bids in response to the IFB. Schlosser submitted the low bid; Kirby submitted the second low bid; and C.E.R. submitted the third low bid. After reviewing the bids, the contracting officer determined that several of the bidders failed to provide the required information regarding their subcontractors. For example, in response to the subcontractor listing requirement, Schlosser provided multiple contractors for each subcontract and Kirby failed to provide addresses and telephone numbers for some of the subcontractors it listed.¹ As a result, the contracting officer contacted all the bidders and requested their respective missing information. Based on Schlosser's completed subcontractor listing, the contracting officer determined that, notwithstanding the confusion related to the subcontractor listing requirement, Schlosser was the low, responsive, responsible bidder. On June 24, 1992, the contracting officer made award to Schlosser. C.E.R.'s protest to our Office followed.

C.E.R. principally argues that both Schlosser's and Kirby's bids were nonresponsive because they failed to contain the required information concerning their proposed subcontractors. According to C.E.R., the subcontractor listing is required prior to bid opening to avoid "bid shopping" on the part of the bidders, that is, the practice where a prime contractor uses one set of subcontractor quotes to prepare its bid and then after award, looks for other subcontractors to perform at lower prices.

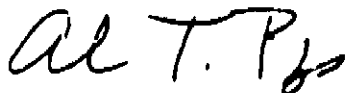
Under the Competition in Contracting Act of 1984, only an "interested party" may protest a procurement by a federal agency. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of, or failure to award, a contract. 4 C.F.R. § 21.0(a) (1992). Determining whether a party is sufficiently interested involves consideration of that party's status in relation to the procurement. Where

¹C.E.R. alleges in its protest that Kirby failed to "identify one of the major subcontractors" required by the solicitation.

there is another party that has a greater interest than the protester, we generally consider the protester to be too remote to establish interest within the meaning of our regulations. See Brunswick Corp. and Brownell & Co., Inc., B-225784.2; B-225784.3, July 22, 1987, 87-2 CPD ¶ 74; Automated Servs., Inc., B-221906, May 19, 1986, 86-1 CPD ¶ 470. A party will not be deemed interested where it would not be in the line for the protested award even if its protest were sustained. Brunswick Corp. and Brownell & Co. Inc., supra.

Although C.E.R. contends that Kirby's second low bid is nonresponsive because, according to C.E.R., Kirby failed to identify one of the major subcontractors in its subcontractor listing requirement, this allegation is not supported by the record. Our independent review of the record shows that Kirby submitted in its bid a name for each of the seven subcontractors it planned to use. As a result, Kirby's bid was responsive since it could not engage in "bid shopping." The fact that Kirby failed to list the addresses and telephone numbers of some of its proposed subcontractors does not render its bid nonresponsive since by virtue of Kirby's identification of the subcontractors by name in its bid, Kirby was locked in a relationship with these subcontractors. See E.J. Murray Co., Inc.; W.M. Schlosser Co., Inc., B-212107; B-212107.2, Mar. 16, 1984, 84-1 CPD ¶ 316; American Medical Corp., B-210353, Feb. 1, 1983, 83-1 CPD ¶ 115. Thus, under the circumstances, C.E.R. is not an interested party for the purposes of challenging an award to Schlosser.²

The protest is dismissed.



Andrew T. Pogany
Acting Assistant General Counsel

²In its comments on the agency report, C.E.R. for the first time also requests resolicitation as a remedy. We think the party with the greater interest to advance this argument is Kirby, the low, responsive bidder under the protester's own interpretation of the requirements. See Data Terminal Serv., Inc., B-226320, Apr. 17, 1987, 87-1 CPD ¶ 423.