



Comptroller General  
of the United States  
Washington, D.C. 20548

3401412

# Decision

**Matter of:** Jenness-Woodkuts, A Joint Venture  
**File:** B-258439  
**Date:** December 15, 1994

## DECISION

Jenness-Woodkuts, a joint venture, protests the procurement agency's failure to include what it contends is the appropriate small disadvantaged business (SDB) preference provision in invitation for bids (IFB) No. F09607-94-B-0038, issued by Moody Air Force Base for the purchase of a hydraulic power squaring shear.

We dismiss the protest.

The IFB was issued on August 8, 1994, and it incorporated Defense Federal Acquisition Regulation Supplement (DFARS) S 252.219-7006 to permit an evaluation preference for bids submitted by SDBs which offer an end item manufactured or produced by a SDB concern. Jenness-Woodkuts protested by letter of September 6, sent by facsimile, that the agency should use DFARS Alternate I, which permits a preference for bids submitted by SDBs which offer an end item manufactured or produced by small business concerns because it alleged that no SDBs allegedly manufacture or produce the item being procured. Bids were opened on September 7 without the agency taking any action on the protest. Five bids were received. The low bid was priced at \$41,593.75. Jenness-Woodkuts's fifth low bid price was \$51,992.05.

Under the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may maintain a protest before our Office. An "interested party" is defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of, or the failure to award, a contract. 31 U.S.C. § 3551(2) (1988); 4 C.F.R. § 21.0(a) (1994). Where a protester would not be in line for award even if we were to resolve the protest in its favor, the protester generally lacks standing as an "interested party." Jarrett S. Blankenship Co., B-250549, Jan. 14, 1993, 93-1 CPD ¶ 44.

Even assuming the DFARS Alternate I preference should have been applicable to this IFB, Jenness-Woodkuts's bid price after evaluation would still remain higher than the low bidder's price. Since Jenness-Woodkut would, therefore, not have been in line for award even had all the bids been evaluated as Jenness-Woodkuts argues they should have been, the protester is not an interested party since our sustaining of its protest would not result in an award to the protester.

Jenness-Woodkut argues that the low bidder's price is below the cost of the equipment, that it should as a result withdraw its bid, and award then should be made to Jenness-Woodkut, based on the Alternate I evaluation preference. The agency asked the low bidder to confirm its bid price and its offer's compliance with the specifications. The bidder confirmed its price and stated that its product did comply with the specifications. Our Office has recognized that a bidder, for various reasons in its business judgment, may decide to submit a below-cost bid and that there is no basis to object to the submission or acceptance of such a bid. W.M. Schlosser Co., Inc., B-254968, Oct. 1, 1993, 93-2 CPD ¶ 201. Further, Jenness-Woodkut does not have standing to claim an error in the low bidder's bid, since it is the responsibility of the agency and the low bidder to assert rights and bring forth the necessary evidence to resolve mistake questions. Johnny F. Smith Truck & Draqline Serv., Inc., B-236984, Jan. 2, 1990, 90-1 CPD ¶ 4. Accordingly, the award to the low bidder was not objectionable.

The protest is dismissed.



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Assistant General Counsel