

B. Miller
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Comptroller General
of the United States

1206293

Washington, D.C. 20548

Decision

Matter of: W. Harris, Government Services Contractor, Inc.

File No.: B-260723

Date: March 28, 1995

DECISION

W. Harris, Government Services Contractor, Inc. (Harris), protests the award of a contract to Macro Service Systems (MSS) under request for proposals (RFP) No. DECA01-94-R-0028, issued by the Defense Commissary Agency (DCA) for shelf stocking and janitorial services at McDill Air Force Base, Florida.

We dismiss the protest.

The RFP specified that contract award would be based on the most advantageous cost to the agency for a base year and 4 option year periods. After submission of best and final offers, the prices of the five technically acceptable offerors were as follows:

MSS	\$5,623,798.90
Customer Service, Inc.	5,831,485.40
Harris	5,994,180.40
Falls Janitorial Service	7,255,597.58
Bids & Diversified Service	7,941,085.00

On March 3, 1995, the contracting officer notified Harris that MSS had received contract award as the lowest priced, technically acceptable offeror. On March 13, Harris filed this protest, contending that MSS is a nonresponsible contractor. Specifically, Harris maintains that because of outstanding tax liens imposed on the firm by various federal and state government entities, MSS lacks the financial resources to perform this contract. Harris also suggests, without further elaboration, that MSS "may not" have submitted a technically acceptable offer. As explained below, we will not consider Harris' protest.

Under our Bid Protest Regulations, only an "interested party" may protest a federal procurement. 4 C.F.R. § 21.1(a) (1995). To qualify as an interested party, a protester must be an actual or prospective bidder or offeror 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); Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. The record in this case shows that Harris is not an interested party under our Regulations.

Determining whether a party is sufficiently interested involves consideration of that party's status in relation to the procurement. Where 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. Telos Corp., B-246177, Jan. 13, 1992, 92-1 CPD ¶ 61. Here, even if we found that award to MSS was improper, the record shows that another firm--Customer Service Inc. (CSI), which was the next lowest priced, technically acceptable offeror--rather than the protester would be in line for award.¹ Accordingly, Harris lacks the requisite direct and substantial interest to be considered an interested party to protest the award to MSS. See RC 27th Ave. Corp.--Recon., B-246727.2, May 20, 1992 92-1 CPD ¶ 455.

Even if Harris were able to establish a direct economic interest in award, we would nonetheless dismiss its protest. Specifically, with respect to Harris' contention that MSS lacks adequate financial resources and is therefore nonresponsible, our Office will not consider an agency's affirmative determination of responsibility--which is largely a business judgment--unless the protester shows possible fraud or bad faith on the part of procurement officials, or that the solicitation contains definitive responsibility criteria that allegedly have not been met. 4 C.F.R. s. 21.3(m)(5); Native Resource Dev., Inc., B-246597.2, B-246597.3, July 13, 1992, 92-2 CPD ¶ 15. In this case, Harris has made no such showing; consequently, Harris' bare assertion that currently outstanding tax liens against MSS render the firm nonresponsible does not meet the standard for review by our Office. King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177.

¹Harris purports to challenge the eligibility of CSI by suggesting--in response to a request for dismissal by the agency--that CSI "may be" nonresponsible. Not only is such an unsupported assertion insufficient to state a valid basis for protest, see Imaging Equip. Servs., Inc., B-247201, Jan. 10, 1992, 92-1 CPD ¶ 50, but, as explained in detail below, our Office does not review a contracting agency's affirmative responsibility determination except in circumstances not present here. See 4 C.F.R. § 21.3(m)(5).

Similarly, Harris' speculation that MSS' proposal "may" be technically unacceptable--without further supporting detail--is also legally insufficient as a protest ground. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge--Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335. Here, Harris' unsupported assertion that the awardee's proposal may be technically unacceptable clearly is insufficient to establish the likelihood that the agency violated applicable procurement laws or regulations. See Imaging Equip. Servs., Inc., supra. Similarly, Harris' statement that it is "concerned that many of the offers may not conform to the solicitation or, if conforming, may not have been properly scored" is not sufficient to state a valid basis for protest.

The protest is dismissed.


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