



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ISC Defense Systems, Inc.--Reconsideration
File: B-236597.3
Date: April 5, 1990

Howard Lipper, Esq., Pillsbury, Madison & Sutro, for the protester.

Sharon Hershkowitz, Esq., Naval Sea Systems Command, Department of the Navy, for the agency.

Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office affirms its prior dismissal of a protest allegation challenging contract award where protester previously was properly found technically unacceptable and is therefore not an interested party since it would not be in line for award if allegation were resolved in its favor.

DECISION

ISC Defense Systems, Inc. (ISCD), requests reconsideration of our prior dismissal of its protest against the award of a contract to Spartron Defense Electronics under request for proposals (RFP) No. N00024-89-R-6074, issued by the Naval Sea Systems Command for the purchase of the target detecting component of the Quickstrike Mines. ISC Defense Systems, Inc., B-236597.2, Jan. 3, 1990, 90-1 CPD ¶ 8.

In its protest, ISCD argued that the previous work of Vitro, Inc., Spartron's proposed subcontractor, under prior Navy contracts for development of the target detecting component, created an organizational conflict of interest requiring disqualification of Spartron's offer. We dismissed the protest because under a previous decision, ISC Defense Systems, Inc., B-236597, Dec. 20, 1989, 89-2 CPD ¶ 570, we found that the Navy's finding that ISCD's proposal was technically unacceptable was reasonable; consequently, ISCD

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was not an interested party to challenge the award decision since ISCD would not be in line for award if its allegation were resolved in its favor.

ISCD, in its request for reconsideration, maintains that it is an interested party for purposes of raising the conflict of interest issue since it has incurred great expense in preparing its proposal. ISCD argues that to ensure that government agencies comply with regulations governing conflict of interest, and to ensure procurement integrity, our Office should address all such conflict of interest claims on their merits regardless of whether the protester would be in line for award if the protest were sustained.

The Competition in Contracting Act of 1984 (CICA) authorizes our Office to decide a protest by an "interested party," which CICA defines as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. § 3551(2) (Supp. IV 1986); 4 C.F.R. § 21.0(a) (1989). We have held that to have the requisite economic interest a protester must be in line for award if the protest were to be sustained. See State Technical Institute at Memphis, 67 Comp. Gen. 236 (1988), 88-1 CPD ¶ 135. Since ISCD was properly determined to be technically unacceptable, it is not in line for award.

ISCD's argument that it does have the required economic interest to be an interested party because it incurred great expense in preparing a proposal has been rejected by the Court of Appeals for the Federal Circuit, which recently interpreted this identical interested party requirement. See United States v. International Business Machines Corp., 892 F.2d 1006 (Fed. Cir. 1989). The court held that Congress limited the class of eligible protesters to those which would receive the contract award in lieu of the challenged awardee and in so doing "deliberately relied on the mechanism of economic self-interest to police agencies' conduct."

Here, ISCD's economic interest, as a disqualified offeror, is essentially no greater than that of a taxpayer, an interest that is not adequate for maintaining a bid protest. See Kirk Bros., Inc., B-225687.2, B-225687.3, Mar. 11, 1987, 87-1 CPD ¶ 275. While we recognize the serious nature of the allegations raised, we believe the interests involved in whether the award of a contract is proper are adequately protected by limiting the class of parties eligible to protest. Here, there were at least two other offerors with a more direct economic interest which could have challenged

the award to Sparton but elected not to do so. Moreover, ISCD may pursue its conflict of interest allegation with appropriate agency officials, such as the Inspector General, if it believes that the matter requires further investigation.

The dismissal is affirmed.



for James F. Hinchman
General Counsel