



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Wingfield & Hundley Elevator Co., Inc.

File: B-276726

Date: June 24, 1997

Eric L. Boyer for the protester.

Philip Leber, Esq., Department of Veterans Affairs, for the agency.

Katherine Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not an interested party to assert that the contracting agency improperly evaluated awardee's "equal" product in a brand name or equal procurement where the protester would not be in line for award even if the allegation were correct.

DECISION

Wingfield & Hundley Elevator Co., Inc. protests the Department of Veterans Affairs's award of an elevator modernization contract to Montgomery Kone under invitation for bids (IFB) No. 652-64-97. The protester contends that the awardee's "equal" product does not conform to certain salient characteristics required by the solicitation.

We dismiss the protest.

The IFB was issued on December 31, 1996, soliciting bids on a brand-name-or-equal basis for an elevator upgrade and elevator maintenance for a 7-month period. The agency received seven bids, including the protester's and the awardee's. Montgomery Kone's low bid was for an "equal" product; Wingfield & Hundley submitted the third low bid. Montgomery Kone's offered product was determined to be acceptable, and the agency made award to that firm. This protest to our Office followed in which the protester questions the agency's evaluation of Montgomery Kone's "equal" product.

Under the Competition in Contracting Act of 1984 and our regulations, a protester must qualify as an interested party before its protest may be considered by our Office. See 4 C.F.R. § 21.1(a) (1997). That is, a protester must have a direct economic interest which would be affected by the award of a contract, or the failure to award a contract. 4 C.F.R. § 21.0(a).

We will not consider the protest because Wingfield & Hundley lacks the direct economic interest necessary to qualify as an interested party to challenge the award to Montgomery Kone. The agency report indicates that Wingfield & Hundley's bid was third low and that there was another responsive bid between the awardee's bid and the protester's bid. The protester has not challenged the acceptability of this firm's bid, thus, therefore even if we determined that the awardee's bid was nonresponsive, there is an intervening bidder who would be in line for award before Wingfield & Hundley. See Ebon Research Sys., B-253833.2; B-253833.3, Nov. 3, 1993, 93-2 CPD ¶ 270 at 7.

Wingfield & Hundley also submitted with its bid a letter offering a deduction for maintenance which the protester contends would make its bid low. However, Wingfield & Hundley's "offer" provided, "[i]f you decide to contract this upgrade with us and extend our existing maintenance contract under the current terms and conditions for 2 years after the completion of the last elevator to be modernized under this proposal, then our total bid price will be reduced by \$46,800.00."

To be responsive, a bid must unequivocally offer to provide the requested items or services in total conformance with the requirements specified in the IFB. All bidders must compete for sealed bid contracts on a common basis. No individual bidder can reserve rights or immunities that are not extended to all bidders by the conditions and specification advertised in the IFB. See Lathan Constr. Corp., B-250487, Feb. 5, 1993, 93-1 CPD ¶ 107 at 3. By qualifying its reduced price on the agency extending its existing maintenance contract for 2 years, the protester is requesting a sole-source award for work that is not available to other bidders as it is not within the scope of the IFB. Since this offer imposes conditions that would modify material requirements of the solicitation it is not for consideration as it is clearly nonresponsive. Bishop Contractors, Inc., B-246526, Dec. 17, 1991, 91-2 CPD ¶ 555 at 2.

The protest is dismissed.

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