

3. The IFB required bidders to submit unit prices on 38 items consisting of both labor and equipment categories. The IFB pricing sheet contained estimates of the quantity of labor hours for each category of labor and the number of equipment items for each category of equipment to be bid. Bidders were required to multiply the per-hour labor rate bid by the estimated number of hours specified and the equipment unit price bid by the estimate of the number of items specified to obtain extended unit prices for each labor and equipment item. Bidders then were to add the extended prices to provide a bid price for the contract as a whole. The IFB informed bidders that this total aggregate price for labor and equipment would determine the lowest bid price for award purposes.

4. Payment under the contract was to be based on the unit price for the actual work performed. In this regard, the IFB provided in pertinent part that:

"The quantity of work hours and maintenance of traffic items is approximate and any increase or decrease or elimination of these items will not be reasons for revisions to any of the contract bid prices or claim by the contractor against the S.H.A.

Section GP-4.03 of the Specifications will not apply to this contract.¹

5. No bidder or prospective bidder filed a protest relating to any impropriety concerning the method of evaluating bids and awarding the contract prior to the public opening of the sealed bids.

6. Bids were received and opened on March 6, 1984 with the following results:

| | |
|--------------------------|--------------|
| Pile Drivers, Inc. | \$308,490.00 |
| Allied Contractors, Inc. | 343,270.00 |
| Concrete General | 406,175.00 |

¹GP-4.03, Variations in Estimated Quantities, of the specifications provides:

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than 25 percent above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 125 percent or below 75 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within 10 days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.

| | |
|-----------------------------------|------------|
| Martin G. Imbach, Inc. | 413,660.00 |
| Edwin A. & John O. Crandell, Inc. | 463,055.00 |
| Appellant | 489,810.00 |
| Covington Machine & Welding, Inc. | 496,695.00 |

7. With regard to the items of labor or equipment in dispute here, Pile Drivers, Inc. bid as follows:

| <u>Labor Items:</u> | <u>Unit Price</u> |
|---|-------------------|
| Item No. 406 - Plumbers | \$0.10/hr. |
| Item No. 407 - Laborers | 7.75/hr. |
| Item No. 409 - Truck Drivers, Multi-axle | 0.10/hr. |
| Item No. 410 - Loader Operator | 0.10/hr. |
| Item No. 411 - Crane Operator | 0.10/hr. |
| Item No. 412 - Operator/Wheel loader w/Backhoe | 0.10/hr. |

| <u>Equipment Items:</u> | <u>Unit Price</u> |
|---|-------------------|
| Item No. 420 - Front End Loader 1 1/2 c.y. | \$0.10/hr. |
| Item No. 421 - Loader Wheel w/Backhoe | 0.10/hr. |
| Item No. 422 - Crane 20 Ton or Under | 0.10/hr. |

8. By letter dated March 4, 1984, SHA requested Pile Drivers, Inc. to verify its bid since it was considerably lower than SHA's estimate of \$419,130.00 for the work. The record does not indicate that SHA's estimates for the quantity of labor and equipment were inaccurate or unreasonably based.

9. Pile Drivers, Inc. verified its bid by letter dated March 19, 1984.

10. By letter dated March 29, 1984, Appellant protested award either to Pile Drivers, Inc. or to the second low bidder, Allied Contractors, Inc. Appellant requested the procurement officer to reject these bids because they were unbalanced. Appellant pointed out that the bid of Pile Drivers, Inc. for Items 406 and 409-412 was \$0.10/hr. while the Federal and State minimum wage is \$3.35/hr. Appellant also noted that the bid of Pile Drivers, Inc. for Items 420-422 was \$0.10/hr. while market rates for this type of equipment range from \$35.00/hr. to \$50.00/hr.

11. SHA notified Pile Drivers, Inc. by letter dated April 23, 1984 that it had been awarded a contract.

12. By letter dated June 1, 1984, the State Highway Administrator denied Appellant's protest.

13. Appellant filed a timely appeal on June 13, 1984.

Decision

The crux of Appellant's case on the merits is that the bids of the low bidder and the second low bidder were nonresponsive because they were unbalanced.² However, Appellant also contends that the low bidder's prices for

certain items did not conform materially to the solicitation, were unreasonably priced, or indicated non-compliance with State and Federal minimum wage laws. While SHA maintains that the two lowest bids were responsive because they were not materially unbalanced, it also contends that Appellant is ineligible to raise a protest on this issue since it is not an interested party. We agree. Appellant does not have standing to challenge award of this contract.

COMAR 21.10.02.02A.³ provides that only an interested party may have its protest considered. An "interested party" is an actual or prospective bidder, offeror or contractor that may be aggrieved by the actions of the procurement officer affecting its competitive position. COMAR 21.10.02.01A; RGS Enterprises, Inc., MSBCA 1106 (April 8, 1983); Delmarva Drilling Co., MSBCA 1096 (January 26, 1983). Whether a party is affected competitively involves consideration of the party's status in relation to the procurement and the nature of the issues involved. International Business Investments, Comp. Gen. Dec. B-202164.2, June 8, 1981, 81-1 CPD ¶459. A party not in line for contract award normally is not affected competitively since it will receive no direct benefit if the protest is upheld. Pluribus Products, Inc., Comp. Gen. Dec. B-210444, March 7, 1983, 83-1 CPD ¶226; Photica, Inc., Comp. Gen. B-211445, July 11, 1983, 83-2 CPD ¶74.

In the instant appeal, there is nothing to indicate, nor does Appellant allege, that the third, fourth, or fifth low bidders would be ineligible for award if its protest is upheld. Since there were three intermediate bidders to whom an award could have been made in the instant procurement, and since no apparent need will arise to resolicit the procurement, Appellant would not be affected competitively even if its protest were considered on the merits and upheld. Accordingly, it does not have the requisite direct and substantial interest with regard to the procurement to give it the necessary standing to protest the award. Compare F&H Manufacturing Corp., Comp. Gen. Dec. B-212254, December 13, 1983, 83-2 CPD ¶676.

For the foregoing reasons, therefore, Appellant's appeal is denied.

²GP-2.15 of SHA's "Standard Specifications for Construction and Materials" (January 1982), incorporated by reference into the IFB, provides that any bid may be rejected when in the State's best interest, if the unit prices are obviously unbalanced.

³COMAR 21.10.02.02A provides:

"An interested party may protest to the respective procurement officer representing the State agency against the award or the proposed award of a contract for supplies, services, maintenance, or construction."