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*2/15/78*

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-189954

**DATE:** February 15, 1978

**MATTER OF:** Fischer & Porter Company

**DIGEST:**

Statement in 40 Fed. Reg. 42406 (1975) that GAO will review complaints concerning contracts awarded under Federal grants upon request of "prospective contractors" refers, generally, to bidders under grantee's solicitation. Where no unsuccessful bidders on prime contract have requested review, complaint filed after award by unsuccessful bidder's subcontractor--which alleges non-responsiveness of successful bid and deficiencies in grantee's solicitation--is dismissed.

Fischer & Porter (F&P) has requested that we review a procurement action by the Milwaukee, Wisconsin Sewerage Commission (MSC) under a grant from the Federal Disaster Assistance Administration, Department of Housing and Urban Development.

Bids were submitted to MSC in November 1976, for the repair or replacement of certain flow meters. Grunau Company, Inc. (which offered to repair the meters), was the low bidder, Butters-Fetting Co., Inc. (repair), was the second low bidder and Advance Mechanical Contractors (AMC) (replace with F&P meters) was third low. MSC awarded the contract to Grunau. However, in April 1977 the contract was rescinded because of a mutual mistake of material fact between the parties. In June 1977, MSC awarded the contract to Butters-Fetting on the basis of its November 1976 bid. F&P then filed its complaint with our Office.

F&P maintains initially that the bid documents submitted by Butters-Fetting were deficient because certain portions of the bid were not fully completed. Further, it is alleged that the bid does not comply with the specifications because repair of the existing meters to

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meet certain performance standards called for in the specifications is not possible. In this connection F&P alleges that the eventual overall cost of the repairs will far exceed the cost of replacement with new F&P meters. The complainant concludes that since the Butters-Fetting bid materially deviated from the specifications, it was nonresponsive. F&P requests, alternatively, that (1) the Butters-Fetting contract be rescinded and award made to AMC, or (2) a resolicitation be conducted.

In our Public Notice in regard to review of complaints concerning contracts awarded under Federal grants, 40 Fed. Reg. 42406 (1975), we stated that " \* \* \* we will undertake reviews concerning the propriety of contract awards made by grantees \* \* \* upon request of prospective contractors." (Emphasis supplied.) In this regard, in a recent decision (Hydro-Clear Corporation, B-189486, February 7, 1978), we stated as follows:

"By that language, we intended to limit the parties that can initiate our review to those with direct and recognizable interests, i.e., generally bidders under the grantee's solicitation.  
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"Under the present circumstances, we believe that the legitimate recognizable interests in the prime contract award to Grumman are adequately protected by limiting the class of parties eligible to request our review to firms that submitted bids and are, therefore, 'prospective contractors.' Here, no bidders on the prime contract, including any of Hydro-Clear's potential prime contractors, have expressed dissatisfaction with the conduct of the procurement."

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In Hydro-Clear, the complaint was filed by a concern listed as a subcontractor in several of the bids received. The complaint was directed at the prime contract award, and alleged that the successful bid was nonresponsive due to failure to comply with descriptive literature requirements, and also that the successful bidder was nonresponsive. To the extent that the complaint actually related to the prime contractor's award of a subcontract, we found that it did not come within the limited circumstances where our Office has stated we will consider such complaints.

Similarly, in the present case the complaint is by a subcontractor listed in an unsuccessful bid (AMC's). It alleged the nonresponsiveness of the successful bid due to incompleteness, and also, in effect, that the grantee's solicitation was defective because it allowed the submission of bids based upon repairing the meters to meet certain performance standards when allegedly the existing meters could not in fact be so repaired. However, AMC has not filed any complaint with respect to the conduct of the procurement by MSC.

In these circumstances, we believe that the class of parties eligible to request review of the award is limited to firms that submitted bids in response to the grantee's solicitation. Hydro-Clear Corporation, supra. Accordingly, the complaint is dismissed.

*Wilton J. Auster*  
for Paul G. Dembling  
General Counsel