



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: PPG Industries, Inc.

File: B-272126

Date: June 24, 1996

David S. Addington, Esq., Baker, Donelson, Bearman & Caldwell, P.C., and Guy A. Zoghby, Esq., for the protester.

Dennis J. Gallagher, Esq., Department of State, for the agency.

Ralph O. White, Esq., and Behn Miller, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester that would likely participate in a procurement as a subcontractor, rather than as a prime contractor, is not an interested party to challenge an agency's intent to make a sole source award.

DECISION

PPG Industries, Inc. protests the proposed award of a sole source contract for passport printers, associated printer and document consumables and printer maintenance to the Toppan Printing Co., Ltd. PPG argues that the agency's decision to purchase only Toppan's Model MP-300 photodigital passport printer is improper because the State Department wrongly concluded that Toppan is the only responsible source of equipment, supplies and services for high-security passport production. PPG also contends that the award of this contract to Toppan, a Japanese company, violates report language on the use of domestic products for passport production in the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995; violates the Buy American Act; and contravenes U.S. policy.

We dismiss the protest.

Prior to preparing an agency report, the State Department requested dismissal of this protest on the grounds that PPG is not a manufacturer of passport printers, and thus is not an interested party for purposes of pursuing a protest in this forum. PPG manufactures a synthetic material called Teslin that can be used in lieu of paper in the printing of security documents. The State Department contends that while PPG might be a subcontractor or supplier of its product to offerors proposing to supply other makes and models of passport printers, it would not itself be an

offeror. Alternatively, the State Department contends that PPG's letter of interest to the agency in response to a February 5, 1996 Commerce Business Daily (CBD) notice of intent to make a sole source award was not properly identified as an agency-level protest, and was not timely filed in response to the CBD notice.¹

Our authorizing statute, the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1994) provides that only an "interested party" may protest a federal procurement. That is, 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. 31 U.S.C. § 3551; 4 C.F.R. § 21.0(a) (1996).

In response to the State Department's contention that PPG does not manufacture or sell a printer that makes passports, PPG concedes that it currently does not manufacture or sell such printers, and has not manufactured or sold them in the past. However, PPG identifies printers manufactured by Ricoh, Canon and Xerox, and states that it can purchase such printers and could use one of them to make an offer as a prime contractor for such a solicitation. In addition, PPG cites to language in our prior decision in Johnson Controls, Inc., B-243605, Aug. 1, 1991, 91-2 CPD ¶ 112, wherein we stated:

¹Although we conclude that PPG is not an interested party here, we disagree that PPG's February 26, 1996 letter to the Department of State was not a protest. The letter clearly objected to the acquisition of printers on a sole source basis from Toppan and requested the opportunity to sell Teslin to the State Department, even though the letter is not captioned as a protest. American Material Handling, Inc., B-250936, Mar. 1, 1993, 93-1 CPD ¶ 183. The State Department also incorrectly concludes that a challenge to a proposed sole source award is untimely unless filed within 10 days of publication of the notice in the CBD. When an agency publishes a notice of intent to make a sole source award in the CBD incorporating note 22, offerors are permitted to prepare a statement of their ability to participate in the procurement and submit it to the agency within 45 days after publication of the notice. A challenge to an intended sole source award is different from the requirement to file a timely protest of a CBD notice that otherwise limits an offeror's ability to compete. Compare Chemical Waste Management, Inc., B-244443, June 28, 1991, 91-2 CPD ¶ 11 and DCC Computers, Inc., 70 Comp. Gen. 534 (1991), 91-1 CPD ¶ 514 (explaining procedure for responding to a CBD notice incorporating note 22) with Digicomp Research Corp., B-262139, Dec. 1, 1995, 95-2 CPD ¶ 246 (CBD notice announcing competition among limited pool of prequalified offerors--but not incorporating footnote 22 applicable to sole source procurements--gave protester notice of its basis for protest, and protest was required to be filed within 10 days of such notice).

"Where a protester challenges the terms of a solicitation and the remedy sought is the opportunity to compete under a revised solicitation, it is an interested party to pursue the protest regardless of whether or not it submitted--or could have submitted--a bid or offer under the challenged solicitation, so long as the challenged requirement has compromised its competitive position."

The language quoted above is but part of the analysis set forth in the Johnson Controls decision, and is not dispositive of the question before us in this case. In that case, a protester challenged as overly restrictive specifications incorporated in a solicitation for a computer-based management and control system to be installed in a new federal building and courthouse. The protester responded to an interested party challenge by showing that it had the necessary capacity and experience to bid; that it had bid in the past on similar projects; that it had performed similar projects in the past; and that it intended to submit a bid under the solicitation Id. at 3. Given that showing, our Office concluded that the protester established its standing to challenge the solicitation even though it might not be able to submit a responsive bid or proposal under the specification as written.

Here, PPG is unable to show the kind of interest found in the Johnson Controls case. While PPG would like to sell its synthetic product for use in making secure passports, PPG does not itself manufacture or sell any form of equipment which could prepare passports for the Department of State. Although PPG could clearly purchase such equipment from other manufacturers for resale to the Department of State, it does not currently sell such equipment, has apparently never sold it in the past, and does not clearly indicate that it plans to do so in the future--only that it could possibly do so. Under these circumstances, we agree with the Department of State that PPG is not an interested party for the purpose of pursuing a protest against the intended sole-source purchase of passport printers from Toppan.

The protest is dismissed.

Comptroller General
of the United States