

DECISION

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

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FILE: B-211868**DATE:** October 20, 1983**MATTER OF:** Service & Sales, Inc.**DIGEST:**

1. Where owner of technical data actively participated in procurement, non-exclusive licensee is not an interested party to protest alleged misuse of proprietary data.
2. GAO does not review affirmative determinations of responsibility except for reasons not present here.
3. Whether the awardee will fulfill its contractual obligations is a matter for the contracting agency in the administration of the contract and does not affect the validity of the award.

Service & Sales, Inc. (SSI), a licensee of Garrett Corporation, protests the award of a contract to Semco Instruments, Inc. for spare parts identified with a Garrett part number under request for proposals (RFP) No. DLA700-83-R-0781 issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA), Columbus, Ohio. SSI contends that DLA's solicitation improperly disclosed proprietary vendor information--an approved source list--SSI had confidentially submitted to DLA with appropriate restrictive legends. SSI also questions whether Semco has affirmatively demonstrated that it is capable of performing the contract and whether Semco is legally authorized by Garrett to use proprietary technical data applicable to this procurement. We dismiss the protest.

SSI states that it "stands in the shoes of Garrett" in protesting the agency's misuse of the technical data. While SSI, upon reasonable belief, also states that it currently is the only vendor authorized by Garrett to supply the items in question to the government, SSI does not claim nor does the record show that SSI is an exclusive licensee. In fact, Garrett, the owner of the drawing, was an offeror which actively participated in this procurement.

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A party must be "interested" under our Bid Protest Procedures, 4 C.F.R. Part 21 (1983), in order to have its protest considered by our Office. Determining whether a party is sufficiently interested involves consideration of the party's status in relation to the procurement and the nature of the issues involved. Kenneth R. Bland, Consultant, B-184852, October 17, 1975, 75-2 CPD 242. We discussed this interested party principle in American Satellite Corporation (Reconsideration), B-189551, April 17, 1978, 78-1 CPD 289, in which we stated that a party's relationship to the question raised by a protest must be direct and that where there is an intermediate party of greater interest, we generally have considered a protester to be too remote from a cause to establish interest within the meaning of our Bid Protest Procedures.

We think that Garrett, as owner of the drawing and as a participant in the procurement, is an intermediate party of greater interest than the protester to raise the issue concerning any alleged government misuse of its proprietary data. The owner obviously has a greater economic interest in the technical data than a mere licensee. Accordingly, we think that recognizable established interests in proprietary data will be adequately protected if our bid protest forum is restricted to owner/offers in individual procurements. Therefore, we do not think that SSI is an interested party concerning this issue and its protest will not be considered.

SSI also argues that Semco is not a responsible offeror--in other words, that Semco has not affirmatively demonstrated that it is a qualified and capable source for delivering conforming products. However, DLA has concluded that Semco is a responsible offeror and has awarded the contract to the firm.

Our Office does not review affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of the procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Tamar Productions, Inc., B-201622, April 27, 1981, 81-1 CPD 325. Since neither exception is applicable here, we have no basis to question DLA's determination that Semco is a responsible offeror. Insofar as SSI is arguing that Semco will not fulfill its contractual obligations, we note that this is a matter for

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the contracting agency in the administration of the contract and does not affect the validity of the award.
Impact Instrumentation, Inc., B-198704, July 28, 1980,
80-2 CPD 75.

Finally, SSI also questions whether DLA committed an irregularity in purchasing the parts from Semco under the designation P/N MIS-6000-1C rather than P/N MIS-6000. The solicitation initially identified the part as Semco P/N MIS-6000-213-982-1400. After again reviewing the technical data, however, the agency's technical personnel contacted Semco to confirm its correct part number for the item. Semco informed the agency that P/N MIS-6000-1C was the correct designation and this part number was subsequently used by the agency in procuring the item. It thus appears that DLA merely corrected a clerical error in the designation of the Semco part number. We fail to see how the purchase of the item under the correct part number would constitute an impropriety, and the protester has offered no evidence to indicate that it might have been. We therefore see no need to further consider the issue.

We dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel