

DECISION

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

31925

FILE: B-219446.2 **DATE:** August 12, 1985
MATTER OF: IKG Industries--Reconsideration

DIGEST:

1. GAO will not reconsider its dismissal of protest as untimely where protester has not shown that its protest alleging that solicitation specifications were unduly restrictive of competition was filed prior to bid opening.
2. Under the Competition in Contracting Act of 1984 and GAO's implementing Bid Protest Regulations, only "interested parties" have standing to protest. An "interested party" is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. A potential subcontractor-supplier is not considered an interested party and, therefore, does not have standing to protest.

IKG Industries (IKG) requests that we reconsider our July 8, 1985, dismissal of its protest against invitation for bids (IFB) No. DACA05-85-B-0037, issued by the Department of Army, Corps of Engineers. We have been advised by the Corps that on February 22, 1985, a contract was awarded to Santa Fe Engineers pursuant to IFB -0037.

IFB -0037 was a direct federal procurement of the construction of a test support facility at Edwards Air Force Base, California. IKG states that one section of the IFB's specifications relating to slip-resistant steel floor plates requires that the plates be impregnated with abrasive through "hot-rolling." IKG, which uses a spray process, maintained that this requirement precluded the use of its product and, in effect, restricted the supply of floor plates to one manufacturer.

IKG's protest was filed after bids submitted in response to IFB -0037 were opened. We dismissed IKG's protest because under our Bid Protest Regulations,

032813

4 C.F.R. § 21.2(a)(1) (1985), protests based on alleged improprieties in a solicitation which are filed after bid opening are untimely.

IKG did not submit a bid in response to IFB -0037, but did provide quotations for its floor plates to firms which would fabricate that part of the project for the prime contractor and to potential prime contractors themselves. In its request for reconsideration IKG references a second solicitation (BR6103-RFP-19) which, according to IKG, contains the same specification requirement which formed the basis of IKG's initial complaint about IFB -0037, and which did not close until sometime after IKG's protest was filed. We understand IKG to assert that its protest as to this latter solicitation is timely and that we should therefore consider the merits of its objections to the "hot-rolling" requirement. BR6103-RFP-19, however, is not a Corps of Engineers solicitation, but one issued by a private construction firm apparently responsible as a subcontractor for a phase of the project which includes floor plates of the type IKG wishes to supply.

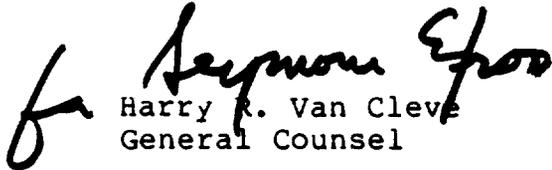
We cannot proceed to the merits of IKG's protest under these circumstances.

We remain of the opinion that IKG's protest of the specifications of IFB -0037 as unduly restrictive was untimely filed. IKG has provided no information which would indicate otherwise. The specification provision of which IKG complains is one established by the government in IFB -0037, and it is the propriety of an award or failure to award a contract under that solicitation which our Office considers. As we stated above, the time in which to protest the "hot-rolling" requirement in that solicitation as unduly restrictive expired when the bids under it were opened. The fact that the "hot-rolling" requirement subsequently is carried forward by the prime contractor, or its subcontractors, as they obtain supplies for the performance of the contract, cannot revive a protest which is untimely because it was not filed before bids were opened under the government's solicitation. We therefore affirm our dismissal of IKG's protest as untimely.

In addition, under our Bid Protest Regulations, a protester must be an interested party in a government procurement in order to have its protest considered by our Office. 31 U.S.C. § 3551, as added by section 2741(a) of the Competition in Contracting Act of 1984 (CICA), defines an "interested party" as "an actual or prospective bidder or offeror whose direct economic interest would be affected

by the award of the contract or by failure to award the contract." This statutory definition has been incorporated in our Bid Protest Regulations implementing CICA. 4 C.F.R. § 21.0(a).

Since it appears that IKG is a subcontractor-supplier, and not an actual or potential bidder under IFB -0037, it thus is not an "interested party" whose protests our Office may consider. PolyCon Corp., B-218304, et al., May 17, 1985, 64 Comp. Gen. _____, 85-1 C.P.D. ¶ 567; PolyCon Corp., B-218162, May 23, 1985, 85-1 C.P.D. ¶ 593; AME Matex Corp., B-218588.2, June 20, 1985, 85-1 C.P.D. ¶ _____.


Harry R. Van Cleave
General Counsel