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DECISION



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

FILE: B-220646.2 **DATE:** March 24, 1986

MATTER OF: Eastman Kodak Co.--Request for
Reconsideration

DIGEST:

1. The General Accounting Office affirms its dismissal of a protest on grounds that the protester was not an interested party where the protester, the third-low offeror, has not shown that it would be next in line for award if its protest against award to the low offeror were sustained.
2. A third-low offeror's economic interest in a contract award that is based solely on the supposition that the second-low offeror may be found nonresponsible is too tenuous to support a finding that the offeror is an interested party to protest an award to the low offeror.

Eastman Kodak Company requests reconsideration of our decision Eastman Kodak Co., B-220646, Jan. 31, 1986, 86-1 CPD ¶ 113, regarding contract No. DAAA09-85-C-1372. The U.S. Army Armament, Munitions, and Chemical Command awarded this contract, the intended purpose of which is to establish a single mobilization base producer for the M734 fuze, to Accudyne Corporation on September 27, 1985.

We affirm our prior decision dismissing Kodak's protest.

Kodak alleged in the initial protest that the Army improperly failed to consider indirect cost factors when evaluating Accudyne's offer. It also argued that Accudyne's offer should have been rejected because the firm proposed to use a foreign subcontractor to provide certain components for the fuze. We found that Kodak, as the third-low offeror, was not an interested party for the purpose of filing this protest, since it would not have been in line for award had we sustained the protest on either ground.

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In its request for reconsideration, Kodak first argues that it should be considered an interested party under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1985), because it suffered a direct economic loss as a result of the award to Accudyne. In this regard, Kodak maintains that had the protest been sustained, its evaluated price would have been low. Kodak premises this argument on its belief that it is the only current mobilization base producer for the M734 fuze and that the costs associated with adding a new producer thus should have been added to the prices of all the other offerors. This contention is without foundation, however. As stated in our prior decision, there were no existing mobilization base manufacturers for the M734 fuze. Instead, the record indicates that both Kodak, and the second-low offeror were existing mobilization base producers for components of the M734 fuze or similar items. Consequently, even if we were to accept Kodak's evaluation approach, there would be no reason to add the cited indirect costs to the prices proposed by either Kodak or the second low offeror. Therefore, Kodak's evaluated price still would not be low, and the firm cannot be said to have suffered a direct economic loss from the award to Accudyne.

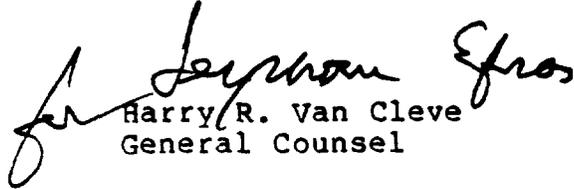
Alternatively, Kodak argues that our decision to dismiss its protest was premature, since the Army has yet to determine the responsibility of the second-low offeror. Here Kodak's interest, based solely on supposition that the Army may find the second-low offeror nonresponsible, thus making Kodak next in line for award, is too tenuous to support a finding that it is an interested party to challenge the award to the low offeror.

Kodak further maintains that we erroneously stated in the prior decision that the components that Accudyne proposed to manufacture in Taiwan are not source controlled. As clearly indicated in the prior decision, this statement reflects a determination by the agency's preaward survey team that the agency subsequently cited as one justification for its conclusion that Accudyne's proposed use of a foreign subcontractor was acceptable. We did not concur in this determination, nor did we have any need to, as we dismissed the protest on procedural grounds.

Finally, Kodak questions our dismissal, without discussion, of its claim for reimbursement of expenses incurred due to the Army's failure to terminate a preaward survey of Kodak after it decided to award the contract to

Accudyne. We are aware of no statute or regulation under which Kodak is entitled to these costs, and the firm has not cited either. Therefore, we see no basis for further considering this claim.

We affirm our dismissal of Kodak's protest.


Harry R. Van Cleve
General Counsel