

DECISION

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

FILE: B-221725

DATE: March 24, 1986

MATTER OF: Aerodyne Investment Castings, Inc.

DIGEST:

Protest against agency's decision to delay consideration of protester's request to become an approved source for item being procured is dismissed as premature since agency has not yet decided whether to make a sole-source award to another firm, pending agency's legal review of that firm's proprietary rights in the applicable specifications.

Aerodyne Investment Castings, Inc. protests the Army's decision to delay consideration of Aerodyne's request to become an approved source for turbine engine blades until completion of the Army's legal review of the extent of the proprietary rights of the General Electric Co. (GE) in the specifications for the blades. We dismiss the protest as premature.

On August 7, 1985, the Army issued a synopsis of the proposed procurement indicating that prequalification as an approved source was required. Because the specifications for the engine blades included GE proprietary rights statements, the Army required that any potential offeror other than GE submit a certificate of legal rights to use the specifications in order to qualify as an approved source. Due to the proprietary rights statements on the specifications, the synopsis also advised that the Army intended to make award to GE on a sole-source basis in accordance with 10 U.S.C.A. § 2304(c)(1) (West Supp. 1985), which authorizes a sole-source award where the required property or services are available from only one responsible source and no other type of property or services will satisfy the agency's needs.

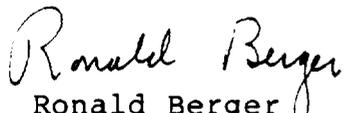
In a letter to the Army dated September 13, Aerodyne requested prequalification as an approved source for the engine blades. By letter dated January 13, 1986, the

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Army advised Aerodyne that the validity of GE's proprietary rights in the specifications was under legal review. The letter concluded that "[u]ntil these rights are lifted, these items must remain sole source." The Army, however, states that no award will be made until the legal review of GE's rights is completed.

We find that the protest is premature because the Army has not yet denied Aerodyne's request to be an approved source. The final decision whether to make a sole-source award to GE will not be made until the Army determines the status of GE's proprietary rights in the specifications. If the Army concludes that GE has no proprietary rights in the specifications, the original basis relied on in the synopsis for making a sole-source award to GE will no longer be valid, and potential offerors other than GE may qualify as approved sources without the need to submit a certificate of right to use the specifications. On the other hand, if GE's asserted rights are found to be valid, offerors like Aerodyne will have the opportunity to qualify as an approved source by submitting a certificate of right to use the specifications. Contrary to Aerodyne's contention, however, there is as yet no need for the Army to consider whether Aerodyne has a legal right to use the specifications, since that issue will be relevant only if GE's proprietary rights are found valid.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel