

DECISION



15266 MR Carter
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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest of Sole-Source Contract Award]

FILE: B-196813

DATE: October 23, 1980

MATTER OF: General Kinetics, Inc.

DIGEST:

Termination for default of contract competitively awarded to protester for cabinets terminates protester's interest in resolution of question whether contract should have included additional quantity of cabinets for which sole-source contract was awarded to another vendor. Since protester is no longer interested party, protest is dismissed.

General Kinetics, Inc., protests an award by the Naval Ocean Systems Center (NOSC) of a sole-source contract to Langley Corporation for 25 "heavy duty military electronic equipment enclosures" (cabinets). In a competitive procurement General Kinetics was awarded a contract for 25 cabinets on an "or equal" basis and here contends that its contract should have been for 50 cabinets with no award to Langley. The contract awarded to General Kinetics was terminated for default. We find that General Kinetics is not an "interested party" within the meaning of our Bid Protest Procedures, 4 C.F.R. part 20 (1980), and will not consider the protest on the merits, as explained below.

Only a limited recitation of the facts is necessary to reach the indicated result. NOSC required these cabinets as part of its contribution of a high-priority inter-service project for the creation of a highly mobile communications facility capable of operating and being transported under unpredictable but potentially extreme conditions. The cabinets were required to have air channels in the sidewalls for the passage of cooling air and to be extremely rugged. Langley constructs its cabinets by a proprietary process using single-piece extruded aluminum

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sidewalls joined by cryogenic pins to a cast aluminum base; General Kinetics generally constructs its cabinets using welded sheet aluminum products.

On January 11, 1979, NOSC issued a request for proposals seeking offers for the furnishing of 25 "Langley or equal" cabinets. After several rounds of proposals and amendments to the solicitation, the request for proposals evolved into its final form on July 3, 1979, which sought offers for 25 cabinets constructed to either of two design specifications. The first specification echoed Langley's construction technique; the alternate specification used welded sheet construction with stringent heat treating requirements. NOSC's actual requirements had changed and were now for approximately 50 cabinets, a fact known to NOSC at least as early as May 21, 1979, but the change was not incorporated into the solicitation.]

General Kinetics was the low-priced offeror in the competitive procurement, but inspired no confidence in NOSC technical personnel in its ability to deliver fully compliant cabinets. Because of NOSC's uncertainty regarding General Kinetics' ability to perform successfully and the high priority of the program, the contracting officer determined to and did award a sole-source contract to Langley on August 16, 1979, for 25 cabinets. On August 30, General Kinetics was awarded a contract under the competitive solicitation for NOSC's initial 25-cabinet requirement. General Kinetics' contract was terminated for default, a matter which is now the subject of proceedings under the disputes clause of the contract.]

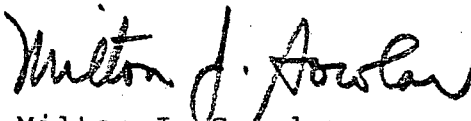
General Kinetics contends that NOSC's requirement for an additional 25 cabinets should have been incorporated into the competitive solicitation by amendment, rather than treated separately, and that the contract awarded to Langley was therefore improper. General Kinetics attributes this alleged impropriety to bias on the part of NOSC.]

Our Bid Protest Procedures require that a party must be "interested" in order for its protest to be considered.] 4 C.F.R. § 20.1(1) (1980). In evaluating

whether a protester satisfies this criterion, we consider the nature of the issues raised and the direct or indirect benefit or relief sought by the protester. American Satellite Corporation (Reconsideration), B-189551, April 17, 1978, 78-1 CPD 289; ABC Management Services, Inc., 55 Comp. Gen. 397 (1975), 75-2 CPD 245; Kenneth R. Bland, Consultant, B-184852, October 17, 1975, 75-2 CPD 242. Even if a firm is initially "interested," it may lose this status because of subsequent events or changes in its position. See, e.g., Dynamic International, Inc., B-186520, September 10, 1976, 76-2 CPD 234; John Bernard Industries, Inc., B-189104, June 22, 1977, 77-1 CPD 446; L&M Services, Inc.--Reconsideration, B-190873, March 6, 1978, 78-1 CPD 175.

[The core of General Kinetics' protest lies in the assertion that its contract should have included the additional quantity of cabinets awarded to Langley.] We do not reach this question, however, because [the termination for default of General Kinetics' contract effectively ended General Kinetics' interest in its resolution.] To the extent that General Kinetics retains an economic interest in this procurement, it is limited to the question of the propriety of the default termination which is a matter for resolution under the pending disputes proceeding and is not appropriate for consideration by our Office.

The protest is dismissed.]


Milton J. Socolar
General Counsel