

15614

**DECISION**



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

FILE: B-195550

DATE: December 5, 1980

MATTER OF: Marine Engineers Beneficial Association;  
Seafarers International Union

**DIGEST:**

Labor unions protesting exercise of contract option because firms that might compete if solicitation were issued employ persons who are or might become affiliated with unions are not "interested" parties under GAO Bid Protest Procedures.

The Marine Engineers Beneficial Association, District 2 (MEBA), and the Seafarers International Union (SIU), protest the decision of the Department of the Navy, Military Sealift Command (MSC) to exercise an option under contract No. N0033-75-C-T006 with Marine Transport Lines (MTL) to allow for the continued operation of nine oil tankers. The contract awarded to MTL provided for the world-wide operation of the oil tankers for an initial contract period of five years with a series of two-year options. The exercise of the first option is the subject of this protest. DL60623

Our Bid Protest Procedures require that a party be "interested" in order that its protest may be considered. 4 C.F.R. § 20.1(a) (1980). The threshold question to be resolved is whether MEBA and SIU are "interested" parties within the meaning of our Bid Protest Procedures. We conclude that they are not.

In determining whether a protester satisfies the interested party criterion, we examine the degree to which the asserted interest is both established and direct. In making this evaluation, we consider the nature of the issues raised and the direct or indirect benefit or relief sought by the protester. Kenneth R. Bland, Consultant, B-184852, October 17, 1975, 75-2 CPD 242. Thus, we have recognized the rights of non-bidders to have their protests considered on the merits

[Protest Involving Contract Continuation]

~~013306~~

113922

where there is a possibility that recognizable established interests will be inadequately protected if our bid protest forum is restricted to bidders in individual procurements. See 49 Comp. Gen. 9 (1969); Abbott Power Corporation, B-186568, December 21, 1976, 76-2 CPD 509.

We discussed the interested party principle in American Satellite Corporation (Reconsideration), B-189551, April 17, 1978, 78-1 CPD 289, in which we affirmed our earlier dismissal of a protest concerning the degree of competition for the prime contract award filed by a subcontractor named in the proposal of an offeror for the prime contract. We stated:

"The party's relationship to the question raised by the protest must be direct. Where there is an intermediate party of greater interest, we generally have considered the protester to be too remote from the cause to establish interest within the meaning of our Bid Protest Procedures \* \* \*."

As explained in both the initial decision and its affirmation on reconsideration, we did not consider the protester an interested party for protest purposes because the firm, only a named subcontractor, in our opinion was "too remote from the subject matter to establish direct interest." In the absence of a protest by a prime offeror, we did not consider the merits of the issues raised.

(MEBA and SIU claim to be interested parties by virtue of their status as maritime unions representing licensed officers and unlicensed seamen.) The unions state that they have collective bargaining agreements with various tanker companies, many of whom have in the past responded to solicitations issued by MSC and have been operators of MSC chartered vessels. (The unions claim that their interest is both direct and substantial "since all of the men filling the billets for the officers and crew of the sealift class tankers are available for affiliation with the protesting unions.") In support of their position MEBA and SIU refer to our previous decision in District 2, Marine Engineers Beneficial Association--Associated Maritime Officers, AFL-CIO, B-181265, November 17, 1974, 74-2 CPD 298, where we considered a protest filed by a labor union.

However, in the cited case the labor union was protesting a nonresponsibility determination made against the low offeror

under a Government solicitation essentially on the basis that the nonresponsibility determination was in fact a negative reflection upon the union rather than the firm. Therefore, in our view the union's interest was direct and substantial.

In contrast, MEBA's and SIU's protest against MSC's exercise of the contract option essentially is based on the proposition that firms which might compete if a solicitation were issued employ persons who are or might become affiliated with the unions. We believe that there clearly are "intermediate part[ies] of greater interest" for purposes of raising a protest of this nature, i.e., those firms which MEBA and SIU allege would have responded if a competition was held. It is those parties -- firms that could be awarded a contract if MTL's option were not exercised (or if a protest against the option exercise were sustained) -- that here represent the type of direct interest contemplated in this circumstance by section 20.1(a) of our Procedures. Since no such firm expressed a timely indication of interest in performing the services involved in MTL's option by, for example, filing a bid protest, we do not believe that our consideration of the matter raised by MEBA and SIU would be appropriate under the principles discussed above.

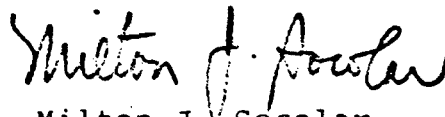
Accordingly, we find the interests of MEBA and SIU to be too remote for the unions to be considered "interested" parties here as contemplated by our Procedures. The protest is dismissed.

MEBA and SIU also request that our Office take steps to insure that expenditures under the MTL contract and similar MSC contracts are properly reviewed and audited, and that we review the MSC tanker "build and charter" program in general, to which the instant procurement relates. (The program as instituted involved the private financing and construction of the tankers with a commitment from the Navy that it would lease them, with renewal provisions for 20 years.)

To the extent that MEBA and SIU are suggesting that we become involved in the administration of MSC's contract with MTL, we point out that contract administration is a function of the procuring agency, not the General Accounting Office. See Nuclear Research Corporation, B-198909, June 5, 1980, 80-1 CPD 393.

Further, we are advised by the Navy that MSC contract expenditures, including those under the build and charter program, are reviewed by the Navy audit group, the Inspector General, and the Defense Contract Audit Agency.

Finally, our Office reviewed MSC's build and charter program in general in a report to the Congress, "Build and Charter Program for Nine Tanker Ships," B-174839, August 15, 1973.

A handwritten signature in cursive script, reading "Milton J. Socolar".

Milton J. Socolar  
General Counsel