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DECISION

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

FILE: B-201363

DATE: March 30, 1981

MATTER OF: Local Union No. 3, International
Union of Operating Engineers

DIGEST:

Union ~~protesting~~ that competition was not conducted on equal basis (no allegedly prejudiced firm has filed protest) is not "interested" party under GAO Bid Protest Procedures.

DLG 06377

Local Union No. 3, International Union of Operating Engineers protests the proposed award of a contract by the Forest Service under invitation for bids (IFB) R5-81-07 for Line Timber Sale Roads in Six Rivers National Forest, California. The union asserts that it advised the contracting officer shortly before bid opening of an increase in a wage rate prescribed in the solicitation, but that the contracting officer refused to amend the IFB to reflect the higher wage rate. The union argues that as a result firms which nonetheless computed their bids to reflect the new rate were prejudiced in the competition against firms which bid based on the lower rate prescribed in the IFB.

The Forest Service advises that bid opening was scheduled for 1:30 p.m. on November 20, and it was not until 12:15 p.m. that the union advised it of the alleged higher wage rates determination. The contracting officer states that it took until 1:20 p.m. to confirm that information with the Department of Labor and that he then declined to postpone bid opening because the new rates had not yet been published in the Federal Register (they were published the following day); the rates included in the IFB had been taken from the latest relevant Federal Register publication, March 14, 1980; and "there were bidders present for the opening, and they had incurred expense to get there."

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We dismiss the protest because we find the Union is not an "interested party" under our Bid Protest Procedures.

Our Procedures require that a party be "interested" for its protest to be considered. 4 C.F.R. § 20.1(a) (1980). 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 nonbidders to have their protests considered on the merits 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.

In our decision in Marine Engineers Beneficial Association; Seafarers International Union, B-195550, December 5, 1980, 60 Comp. Gen. _____, 80-2 CPD 418, we dismissed a protest by two maritime unions against the Government's exercise of a contract option. The protest essentially was 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 stated:

"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 [the unions] allege would have responded if a competition was held. It is those parties -- firms that could be awarded a contract if MTL's [the contractor'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 * * *."

We similarly view the interest of Local Union No. 3 to be too remote for the union to be considered an interested party here as contemplated by our Procedures. As shown above, the basis for Local Union No. 3's protest is that firms which anticipated the increase in the prescribed wage rate were prejudiced in the competition with respect to firms whose bids reflected the lower wage determination prescribed in the invitation. However, no firm that allegedly was prejudiced has filed a timely protest on the matter.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel