DECISION

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

FILE: B-211189 DATE: April 12, 1983

MATTER OF: American Federation of Labor - Congress of Industrial Organizations, Building and Construction Trades Department

DIGEST:

1. Labor union protest, alleging agency selection of improper method of procurement (negotiation), is dismissed because union is not an "interested" party for purposes of this issue under GAO Bid Protest Procedures.

2. Labor union protest, alleging agency intention to use improper wage rates, is for consideration by Department of Labor and not by GAO.

The American Federation of Labor - Congress of Industrial Organizations, Building and Construction Trades Department (Union), protests the United States Army, Corps of Engineers' (Army), decision to negotiate, rather than procure by formal advertising, a contract for construction. The Union objects to the method of procurement and to the Army's alleged intention to use improper wage rates in the negotiated contract.

We dismiss the protest.

Our Bid Protest Procedures require that a party be "interested" in order that its protest may be considered. 4 C.F.R. § 21.1(a) (1983). We do not find the Union to be an interested party in this case for purposes of challenging the method of procurement selected by the Army.

In reaching this conclusion, we look to see how closely tied the protester is to the interest which its protest arguably seeks to protect. As a general rule, we have limited the class of parties eligible to protest to disappointed bidders or offerors. Keith Donaldson, B-207098, May 25, 1982, 82-1 CPD 498. However, we have recognized the rights of nonbidders where there is the possibility that recognizable

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established interests will be inadequately protected if our bid protest forum is restricted to bidders. See Falcon Electric Company, Inc., B-199080, April 9, 1981, 81-1 CPD 271.

Here, the Union argues that the construction has a dollar value of $4.5 million and that it is in the best interests of all concerned that the additional work be procured competitively. The Union also contends that:

> "It is totally unfair to the large number of contractors who perform work at Fort Irwin that they not be given the opportunity of exercising their right to competitive bidding on this project."

In a similar protest, Marine Engineers Beneficial Association; Seafarers International Union, B-195550, December 5, 1980, 80-2 CPD 418, we held that firms--such as the "large number of contractors" alluded to above--which could be awarded a contract represent the direct interest contemplated by our Bid Protest Procedures and that unions, whose interest rests on the assumption that firms entering into competition under a new solicitation either employ union members or might employ union members, represented an insufficient interest. We so held because, in our view, the firms clearly have a greater interest than the union for the purposes of raising a protest of this nature.

The Union's real concern, however, appears to be that Union members may be improperly denied the benefit of a new (higher) Davis-Bacon wage rate determination which would accompany a new competitive solicitation. We find the Union an "interested" party so far as it questions the propriety of a wage rate, but we dismiss this aspect of the protest because the Department of Labor is the proper agency to consider the propriety of wage rates and not GAO.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
Acting General Counsel