

DECISION

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

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FILE: B-218304; B-218305**DATE:** May 17, 1985**MATTER OF:** PolyCon Corporation**DIGEST:**

To be considered an interested party so as to have standing to protest under the Competition in Contracting Act of 1984 and the General Accounting Office implementing Bid Protest Regulations, a party must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. A potential subcontractor on a direct federal procurement cannot be considered an actual or prospective bidder or offeror.

PolyCon Corporation (PolyCon) protests the specifications included in invitations for bids (IFB) DAKF11-85-B-0035 and DAKF11-85-B-0040, both issued by the Department of the Army at Fort McPherson, Georgia. Respectively, the solicitations are for the replacement of the condensate line from building 210 to building 208 and for the replacement of the steam distribution system that runs from building 160 to various other buildings, all at Fort McPherson. The protests are dismissed.

Concerning both solicitations, PolyCon, a supplier of underground heat distribution systems and a potential subcontractor, protests that certain of the specifications are at variance with PolyCon's federal-agency-approved brochure, but that there are no apparent circumstances that would justify the extra expense required by the deviation. PolyCon also contends that other requirements of IFB DAKF11-85-B-0040 exclude its system from consideration.

Prior to the enactment of the Competition in Contracting Act of 1984 (CICA), Pub. L. 98-369, our Bid Protest Procedures required, as a prerequisite to our consideration of a protest, that the protesting party have a sufficiently legitimate interest in the procurement. 4 C.F.R. § 21.1(a) (1984). In determining whether a protester satisfied the interested party requirements, we considered the nature of the issues raised and the direct

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or indirect benefit or relief sought by the protester. Edison Chemical Systems, Inc., B-212048, Mar. 27, 1984, 84-1 C.P.D. ¶ 353. Generally, a potential subcontractor was not considered to be an interested party essentially because it did not stand in a position to assert a right concerning which it had the greatest interest and, therefore, was not likely to be the most zealous protector. See Elec-Trol, Inc., 56 Comp. Gen. 730 (1977), 77-1 C.P.D. ¶ 441.

In certain limited circumstances, however, we have found that a potential subcontractor met the interested party requirement where no other immediate party had a greater interest in the issue raised or where there was a possibility that the subcontractor's interest would not be adequately protected if our bid protest forum were restricted solely to potential awardees. See Radix II Incorporated, B-208557.3, Nov. 29, 1982, 82-2 C.P.D. ¶ 484; see also Die Mesh Corporation, 58 Comp. Gen. 111 (1978), 78-2 C.P.D. ¶ 374.

However, under section 2741(a) of the CICA (to be codified at 31 U.S.C. § 3551, et seq.), an interested party is defined as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." This statutory definition of an "interested party" is reflected in the language of our Bid-Protest Regulations which implement the CICA. 4 C.F.R. § 21.0(a) (1985). Accordingly, with respect to all bid protests filed on or after January 15, 1985, the effective date of subtitle "D" of the CICA, only protests involving a direct federal procurement filed by a party that comes within the statutory definition of an interested party can be considered. Thus, our Office will no longer consider subcontractor protests except where the subcontract is by or for the government. 4 C.F.R. § 21.3(f)(10) (1985).

As a potential subcontractor-supplier, the protester in this case is not an actual or prospective bidder or offeror on the protested solicitations, and the solicitations do not involve subcontracts by or for the government. Therefore, under the CICA and our implementing Bid Protest Regulations, PolyCon is not an interested party and its protests will not be considered.

The protests are dismissed.

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General Counsel