



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Kinetic Engineering and Construction, Inc.

File: B-228441

Date: November 2, 1987

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### DIGEST

1. Protester's assertion that award to manufacturer of equipment designated in the solicitation to be used in contract resulted in de facto sole-source award is dismissed. The contract consisted of the equipment and work to be performed in installation of the system and nothing prevented the protester and other prospective bidders from bidding on the contract as a whole.

2. Claim for payment of bid preparation costs and costs of pursuing the protest, including attorney's fees, is dismissed where there is no finding by this Office that a solicitation, proposed award or award does not comply with a statute or regulation.

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### DECISION

Kinetic Engineering and Construction, Inc. (Kinetic), protests the award of a contract to the King-Fisher Company under invitation for bids No. N62474-86-B-6397 issued by the Department of the Navy for a base fire alarm system. Kinetic contends that it believed the project was being bid competitively, and that allowing King-Fisher to bid on the contract made it a de facto sole-source award, because King-Fisher was the designated manufacturer of the equipment in the solicitation. Kinetic also claims payment for bid preparation costs and costs of pursuing their protest, including attorney's fees.

We dismiss the protest.

The specifications required that the equipment was to be supplied by King-Fisher and precluded any other equipment from being acceptable. According to Kinetic, the equipment constitutes approximately 54 percent of the contract and allowing King-Fisher to bid resulted in a de facto sole-source award. We do not agree that the facts presented result in a de facto sole-source award. The fact that King-Fisher was the manufacturer of the equipment did not guarantee that it would be awarded the contract. The

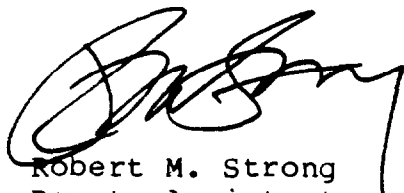
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contract does not consist solely of equipment provided by King-Fisher, in fact, much of it consists of work to be performed in the installation of the fire alarm system. King Fisher had to compete with the other bidders for the work to be performed under the contract as a whole.

According to the Navy, at least 16 bids were solicited during the solicitation period which resulted in the receipt of the 2 bids from Kinetic and King-Fisher. Kinetic and the other prospective bidders were not prevented from bidding because King-Fisher was supplying the equipment, the fact is that Kinetic chose to bid and the other prospective bidders chose not to bid. Kinetic had no reasonable basis upon which to assume that King-Fisher would not bid, nor is there any legal basis to exclude that firm from seeking the award of the contract. Moreover, Kinetic's assertion that the agency should have procured the hardware separately to provide competition for the installation is untimely, since it was not raised prior to bid opening. 4 C.F.R. § 21.2 (a)(1) (1987). Accordingly, we reject the protester's assertion that this is a de facto sole-source procurement.

There is no basis for payment to the protester of costs of bid preparation and costs of pursuing the protest, including attorney's fees. Payment for such costs are predicated upon a finding by our Office that a solicitation, proposed award or award does not comply with a statute or regulation and we have not made such a finding here. 4 C.F.R. § 21.6(d); Sabreliner Corporation, B-221857, Apr. 29, 1986, 86-1 C.P.D. ¶ 414.

The protest is dismissed.



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