



## Decision

**Matter of:** Olin Corporation--Reconsideration  
**File:** B-252154.2  
**Date:** June 3, 1993

Kenneth B. Weckstein, Esq., and Constance A. Wilkinson, Esq., Epstein, Becker & Green, P.C., for the protester. Matthew S. Perlman, Esq., Arent Fox Kintner Plotkin & Kahn, for PMX Industries, Inc., an interested party. Samuel D. Kreiter, Esq., Department of the Treasury, for the agency. Guy R. Pietrovi, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Prior decision dismissing a protest based on an allegation of improper government disclosure of proprietary information more than 11 years ago is affirmed, where the protester has not shown any errors of law or fact that warrant reversing or modifying our prior decision.

### DECISION

Olin Corporation requests reconsideration of our decision in Olin Corp., B-252154, Mar. 9, 1993, 93-1 CPD ¶ 217, in which we dismissed Olin's protest of the award of a contract to PMX Industries, Inc. under solicitation No. USM-87-8701-93-1, issued by the United States Mint, Department of the Treasury, for the processing, fabrication and delivery of cupro-nickel, 5-cent strip.

We affirm the dismissal.

Olin protested that PMX unlawfully obtained Olin proprietary information over 11 years ago concerning the manufacture of cupro-nickel metal from a Mint employee and that this alleged unlawful disclosure enabled PMX to secure the award

of this contract.<sup>1</sup> We dismissed Olin's protest because the alleged wrongful disclosure, of which Olin complains, did not occur within the context of the competition under this solicitation. Essentially, Olin's protest concerns a dispute between private parties, over which the courts, and not our Office, retain jurisdiction.

Olin contends that we erred as a matter of law by overlooking a number of recent decisions in which we reviewed allegations that the "misuse of proprietary data" adversely affected the integrity of the procurement system.<sup>2</sup> Specifically, Olin cites our decisions in General Elec. Gov't Servs., Inc., B-245797.3, Sept. 23, 1992, 92-2 CPD ¶ 196 (awardee hired former government employee who allegedly had access to source selection sensitive documents and the protester's confidential information); Person-System Integration, Ltd., B-243927.4, June 30, 1992, 92-1 CPD ¶ 546 (awardee hired former government employees who allegedly had access to procurement sensitive information); Holmes & Narver, Inc., B-239469.2; B-269469.3, Sept. 14, 1990, 90-2 CPD ¶ 210 (awardee hired former government employee/consultant who allegedly had access to confidential data concerning the solicitation that the protester did not have); and Compliance Corp., B-239252, Aug. 15, 1990, 90-2 CPD ¶ 126, recon. denied, B-239252.3, Nov. 28, 1990, 90-2 CPD ¶ 435<sup>3</sup> (contracting officer properly disqualified a firm from the competition to protect the integrity of the procurement system, where the firm during the competition improperly obtained a competitor's proprietary information that may have afforded the firm an unfair competitive advantage).

Olin is incorrect in its supposition that we overlooked the cases to which it now cites. In each of these cases, unlike the situation alleged by Olin here, the alleged misconduct or unfair advantage was proximate to the procurement that was under protest.<sup>4</sup> Our review was limited to considering

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<sup>1</sup>PMX denies that a Mint employee divulged any such proprietary information of Olin's manufacturing technology to PMX.

<sup>2</sup>Olin does not argue that there are any errors of fact in our prior decision that warrant reversing or modifying the decision.

<sup>3</sup>See also Compliance Corp. v. United States, 22 Cl.Ct. 193 (1990) in which the court reached the same result.

<sup>4</sup>Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551 et seq. (1988), the General Accounting Office will  
(continued...)

whether the procuring agency had a reasonable basis to exclude an offeror from the competition or allow an offeror to compete in the face of an alleged conflict of interest or misconduct in the procurement that arguably compromised the integrity of the competition in the particular procurement. See, e.g., General Elec. Gov't Servs., Inc., supra; Compliance Corp., supra.

Here, Olin does not allege that the disclosure of its proprietary data (more than 11 years ago) was proximate to the Mint's procurement of cupro-nickel metal but in essence argues that PMX, in performing its contract with the Mint, will use Olin's proprietary data that had been improperly obtained. While Olin characterizes this alleged use of Olin's proprietary data as affecting the integrity of the procurement, it actually is, as we stated in our prior decision, a dispute between private parties concerning the alleged disclosure and use of proprietary information. See Aeronautical Instrument and Radio Co., B-224431.3, Aug. 7, 1986, 86-2 CPD ¶ 170.

To the extent that Olin is challenging PMX's integrity as a contractor because of PMX's alleged improper use of Olin's proprietary information, this matter concerns the Mint's affirmative determination of PMX's responsibility, which we will only review where there is a showing of fraud or bad faith on the part of the procuring officials or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(m)(5) (1993). No such showing has been made here.

The dismissal is affirmed.



Robert M. Strong  
Associate General Counsel

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<sup>4</sup>(...continued)  
review protests concerning the alleged violation of procurement laws or regulations with respect to procurements by federal agencies.