

14006 PL-2

DECISION



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

FILE: B-197001

DATE: June 12, 1980

MATTER OF: Universal Analytics, Inc.

DIGEST:

1. Subcontract protest alleging direct Government participation through recommendation, revision, structure and format of request for proposals (RFP), explanation to prime contractor of evaluation criteria and Federal procurement regulations, furnishing of sample RFP and preaward proposal evaluation whose results were not communicated to prime contractor, will not be considered on merits since such participation did not cause or control selection or rejection of protester under standards enunciated in Optimum Systems, Incorporated, 54 Comp. Gen. 767 (1975).
2. Subcontract protest alleging prejudice to interest of Government and deviation from "Federal norm" will not be considered on merits since those claims do not fall within any of the exceptions stated in Optimum Systems, Incorporated, 54 Comp. Gen. 767 (1975).

Universal Analytics, Inc. (Universal), [protests *Against* the award of a subcontract] to Computer Sciences Corporation (CSC) by the University of Georgia/Computer Software Management and Information Center (COSMIC) resulting from COSMIC's prime contract No. NASW-3247 with the National Aeronautics and Space Administration (NASA).

010868

112544

As a threshold matter, this Office will not review the merits of a subcontract protest except in the five limited circumstances set out in Optimum Systems, Incorporated, 54 Comp. Gen. 767 (1975), 75-1 CPD 166. Universal recognizes our position but alleges that one of the circumstances, the Government's active or direct participation in the selection of the subcontractor, is present here thus enabling us to reach the merits of Universal's protest. Universal also claims we may reach the merits because the prime contractor's procurement process deviated from the "Federal norm" and because the award of the subcontract is prejudicial to the interests of the Government.

Universal claims direct Government participation through NASA's continual involvement, intervention and guidance provided to COSMIC in all phases of the procurement, including the preparation of the request for proposals (RFP), resolution of the various protests, and evaluation review and interpretation of NASA procurement regulations.

The administrative report indicates that NASA was directly involved in an earlier protest against the specifications in the initial RFP and revision of the initial RFP, and in establishing the structure and format of the revised RFP. NASA explained to COSMIC the evaluation criteria and certain other items and conditions NASA uses in its own RFPs. NASA also provided COSMIC with a sample NASA RFP as a guide to ensure COSMIC would establish a valid basis for selecting a subcontractor. However, NASA did not require any particular language in the RFP and the protest here is not related to any revisions to the RFP in which NASA was involved. NASA also responded at a conference to offerors' questions regarding the evaluation of proposals.

Under Optimum Systems, Incorporated, *supra*, active or direct Government participation in the procurement must cause or control the rejection or selection of a potential subcontractor, or impose such conditions on the contractor as to significantly limit subcontract sources, before we will consider

the merits of a subcontract protest. NASA's involvement in COSMIC's subcontract procurement is substantially the same as in Optimum Systems, Incorporated, where we held such involvement insufficient cause for our Office to consider the potential subcontractor's protest. None of NASA's activities indicate that COSMIC's selection of CSC was not independently made.

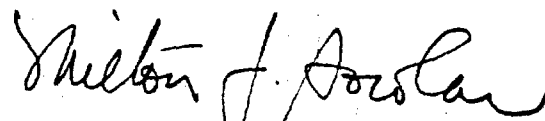
Additional involvement, not found in Optimum Systems, Incorporated, is present here but does not result in our consideration of the protest. Without the knowledge of the NASA contracting officer, a NASA Technical Monitor requested and received from COSMIC copies of all proposals and sent them to the Goddard Space Flight Center and the Navy for technical evaluations. The Technical Monitor had the impression that he had responsibility to ensure COSMIC conducted a fair and impartial technical evaluation. Universal was notified at a NASA conference that NASA planned to use a team of experts from various Government agencies to participate in the proposal evaluations with COSMIC. Although the Government evaluated proposals prior to award, the record shows that the results of these evaluations were not communicated to COSMIC and that COSMIC was not aware of such Government review. We conclude that this Government participation did not cause or control COSMIC's selection of CSC.

Universal's other arguments urging this Office to exercise jurisdiction over the protested procurement are without merit. Our Office has held that allegations of an award being prejudicial to the interests of the Government are not exceptions under which we will consider a subcontract protest. Rantec Division of Emerson Electric Company, B-185250, December 15, 1975, 75-2 CPD 394. The only exceptions are the five circumstances set out in Optimum Systems, Incorporated. For these reasons, the question of whether the "Federal norm" is being followed in the the immediate subcontract situation is not for our consideration. Automatic Laundry Company of Dallas, B-185920, July 13, 1976, 76-2 CPD 38.

B-197001

4

The protest is dismissed.

A handwritten signature in dark ink, appearing to read "Milton J. Socolar". The signature is fluid and cursive, with the first name "Milton" being more prominent and the last name "Socolar" written in a more compact, flowing style.

Milton J. Socolar  
General Counsel