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DECISION



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

FILE: B-202312 DATE: September 3, 1981
MATTER OF: Industrial Waste Disposal, Inc.

DIGEST:

Contract for refuse collection services was totally set aside for small business concerns. After award, agency permitted small business contractor to subcontract the entire performance of the contract to a large business. GAO dismisses protest by another large business because action complained of is matter of contract administration which GAO will not resolve under its bid protest function.

Industrial Waste Disposal, Inc. (IWD), a large business, did not bid on an Air Force solicitation for refuse disposal services because the procurement was totally set aside for small business concerns and IWD was ineligible for award. IWD protested when it learned that the small business concern to whom the contract had been awarded subsequently subcontracted 100 percent of the work to a large business. For the reasons set forth below, the protest is dismissed.

Wright-Patterson Air Force Base, Ohio, issued invitation for bids (IFB) F33601-80-B-X120, a total small business set-aside, for refuse collection services. The apparent low bidder on the industrial portion of the requirement (the residential portion is not at issue) was Environmental Sanitation Management, Inc. (ESM), a small business.

The Air Force buyer asked several of ESM's past and current customers about the quality of the firm's performance and checked with the firm's financial reference. In addition, a preaward survey of EMS was performed by the Defense Contract Administration Services Management Area,

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St. Louis. Based upon the favorable information contained in these reports, the contracting officer concluded that ESM was a responsible prospective contractor and awarded it the contract. The contract was then assigned to an Administrative Contracting Officer (ACO).

The Air Force states that the first suggestion that ESM wished to subcontract the work was made when the firm attended the preperformance conference. In accordance with the terms of the contract, which required the ACO's written approval of any subcontracting of the work, ESM later formally proposed to subcontract 100 percent of the work to the large business firm which had been the prior contractor for these services. The subcontract was approved and the work has been performed by the large business firm.

IWD objects to the subcontracting arrangement on the ground that, in essence, it has resulted in the award of a contract to a large business and therefore frustrates the policy which underlies the small business set-aside program: that a fair proportion of Government contracts be placed with small business concerns. IWD maintains that if this policy is to be meaningful, the ACO should compel ESM to make at least a "significant contribution" to the performance of the contract. Alternatively, IWD argues, if the Air Force is content to have the work performed by a large business, the requirement should be readvertised on an unrestricted basis so that other large businesses, such as the protester, can compete.

ESM's bid, and the record on which the contracting officer found ESM to be responsible, contain no indication that the performance of the work might be subcontracted. The contracting officer determined that ESM was capable of performing the contract based solely on the firm's own merits. Not until the contract was awarded and performance was to begin did ESM seek, and obtain, approval to subcontract the work.

We emphasize the chronology of these events because our concern in deciding bid protests is to assure that contracts are properly awarded. Once a contract is awarded, the administration of that contract is the responsibility of the procuring agency. Kaufman DeDell Printing, Inc. -- Reconsideration, B-188054, October 25, 1977, 77-2 CPD 321. Here, the contract was awarded to the low responsive and

responsible small business bidder. The subcontracting arrangement came about only after ESM had been awarded the contract. Therefore, the decision to permit ESM to subcontract the work is a matter of contract administration, the propriety of which we will not resolve under our bid protest function. Western Filament, Inc., B-192519, August 30, 1978, 78-2 CPD 157. Moreover, we point out that unlike supply contracts which, when set-aside for small business, require the contractors to furnish end items produced by small business concerns, contracts for services contain no prohibition on subcontracting with large businesses. See Engineering Computer Opteconomics, Inc., B-203508, June 22, 1981, 81-1 CPD 516.

To the extent that IWD is alleging that ESM itself should not be considered a small business in light of its subcontracting arrangement, we point out that size status protests are to be filed with the contracting officer, who is to forward them to the Small Business Administration (SBA). 13 C.F.R. § 121.3-5(a) (1981). While such a protest in this case would be considered untimely in the sense that its resolution would not affect the award to ESM, the SBA decision would apply to future procurements.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel