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DECISION



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

FILE: U-204923

DATE: December 14, 1981

MATTER OF: L & L Electrical Service, Inc.

DIGEST:

GAO will not review the merits of a potential subcontractor's complaint against a grantee's determination that the complainant was not an eligible minority business enterprise. This is a matter of grant administration cognizable by the grantor agency, not GAO.

L & L Electrical Service, Inc. (L&L), complains against the determination made by the Metropolitan Atlanta Rapid Transit Authority (MARTA) that L&L is not an eligible minority business enterprise (MBE) for purposes of a subcontract award on project No. CN 430. Since the project is funded in part by a grant from the Department of Transportation, Urban Mass Transportation Administration (UMTA), L&L requests that our Office review MARTA's determination in accord with our public notice entitled, "Review of Complaints Concerning Contracts Under Federal Grants," 40 Fed. Reg. 42406, September 12, 1975. Since UMTA has an established procedure under which L&L may seek review of MARTA's determination and L&L's appeal is pending before the proper forum, we will not review the merits of L&L's complaint.

For prior MARTA projects, L&L had been certified by MARTA as eligible to participate as an MBE. For project No. CN 430, involving earthwork and construction of a certain tunnel line, L&L and another electrical contracting firm, acting in joint venture, submitted a subcontract bid to one of three bidders, Granite City Construction (Granite). MARTA determined that Granite submitted the low, responsive bid but that Granite was not eligible for award unless Granite replaced L&L because, in MARTA's view, L&L did not qualify as an MBE. Specifically, MARTA

concluded that L&L was not minority controlled. Granite found an MBE acceptable to MARTA and replaced L&L. MARTA made the award to Granite.

L&L requested MARTA to reconsider its determination, requested UMTA's review of MARTA's determination, and requested that our Office review both MARTA's and UMTA's actions. However, L&L withdrew its request that its complaint be resolved prior to award to Granite.

UMTA's regulations, 49 C.F.R. part 23 (1980), set forth eligibility standards which must be used by grantees in determining whether a firm is owned and controlled by minorities and, thus, whether the firm is eligible to be certified as an MBE. UMTA's regulations provide that a business aggrieved by an adverse grantee determination may appeal to the Department of Transportation (DOT). L&L's appeal is pending with DOT.

UMTA's regulations also provide that the denial of an MBE certification by a grantee is final for that contract and other contracts then being let by the grantee. The regulations permit MBE's and joint ventures to correct deficiencies in control only for future procurements. While an appeal is pending, the regulations also permit the Secretary of Transportation to deny the firm eligibility to participate as an MBE on all DOT-funded projects. Here, the Secretary of Transportation has not denied L&L eligibility to participate as an MBE on other DOT-funded projects while L&L's appeal is pending. In fact, since MARTA's determination, the Houston Transit Authority certified L&L as an eligible MBE for participation in one of its transit projects.

Our Office reviews complaints against the award of contracts under grants in order to foster compliance with grant terms, agency regulations, and applicable statutory requirements. It is not our intent to interfere with the function and responsibility of grantor agencies in administering grants. For example, in Paul N. Howard Company--Reconsideration, 60 Comp. Gen. _____ (B-199145.2, July 17, 1981), 81-2 CPD 42, we stated that the bidder's unconditional certification to comply with the solicitation's minority subcontractor requirements makes the bid responsive on that point. We also stated that the manner

in which the bidder carries out its obligation is a matter of contract and grant administration within the purview of the grantee and grantor, respectively. Thus, our reviews have not extended to examining whether a particular potential subcontractor has or has not been properly certified as an eligible MBE.

Complaint dismissed.

Harry R. Van Cleve
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Acting General Counsel