

DECISION



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

FILE: B-207181

DATE: May 20, 1982

MATTER OF: Sybron Corporation

DIGEST:

1. Where protester's initial submission indicates protest involves a matter which GAO does not consider, GAO will dismiss the protest without requesting an agency report.
2. GAO will review award of a subcontract by the prime contractor only in the limited circumstances set forth in Optimum Systems, Inc., and not when the Government involvement is limited to approval and neither fraud nor bad faith on the part of the Government is either alleged or shown.

Sybron Corporation of Rochester, New York (Sybron), protests generally the award of any contracts or subcontracts to Getinge International, Inc. (Getinge), and, in particular, the award of a subcontract to Getinge by B. H. Harmon Construction Co., Inc., the prime contractor, for sterilization equipment for the Biloxi, Mississippi, Veterans Administration Medical Center (VA) project No. 520-054.

Sybron contends that Getinge is ineligible for Federal contracts and subcontracts because, contrary to the requirements of the Federal Food, Drug and Cosmetic Act, 52 Stat. 1041, as amended, 21 U.S.C. § 321, et seq. (1976), and applicable regulations, 21 C.F.R. § 807 (1931), Getinge has not registered any of its establishments here or abroad with the Food and Drug Administration (FDA) and has failed to list its medical device products or file any premarket notifications with the FDA.

Sybron also alleges that Getinge is consistently pursuing subcontracts to supply sterilizers for various VA hospital construction projects; however, Sybron has identified only the one VA project which can form the

subject of a protest. 4 C.F.R. § 21.1(a) (1981). Sybron notes that the subcontract has tentatively been awarded to Getinge. A request by the prime contractor for approval of Getinge as a subcontractor has been submitted to the VA for approval pursuant to paragraph G-5F of the General Conditions of the prime contract and is currently pending.

This protest falls within the ambit of our decisions that where it is clear from a protester's initial submission that the protest concerns a matter which our Office will not consider, we will dispose of the protest without securing an administrative report. Gateway Van & Storage Company, B-198900, July 1, 1980, 80-2 CPD 4; Broken Lance Enterprises, Inc.--Reconsideration, June 19, 1980, 80-1 CPD 433.

In Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166, our Office held that we would consider protests concerning the award of subcontracts by prime contractors only in certain limited circumstances. These are: (1) where the prime contractor is acting as the purchasing agent of the Government; (2) where the active or direct participation of the Government in the selection of a subcontractor has the net effect of causing or controlling the rejection or selection of potential subcontractors, or of significantly limiting subcontractor sources; (3) where fraud or bad faith in the approval by the Government of the subcontract award is shown; (4) where the subcontract award is "for the Government"; or (5) where a Federal agency entitled to an advance decision requests it. New Brunswick Scientific Co., Inc., B-195454, August 20, 1979, 79-2 CPD 135; Sargent Industries, B-188220, February 23, 1977, 77-1 CPD 133.

The protest indicates on its face that selection of the subcontractor is the act of the prime contractor only subject to Government approval. Since neither fraud nor bad faith on the part of the Government is either alleged or shown, review of this action would result in our Office becoming involved in contract administration contrary to our Bid Protest Procedures, 41 C.F.R. part 21 (1981); New Brunswick Scientific Co., Inc., supra.

We summarily dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel