

DECISION

2011-
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-210726; B-210726.2 **DATE:** May 19, 1983

MATTER OF: Worldwide Direct Marketing; Market Compilation
and Research Bureau, Inc.

DIGEST:

protests of award of subcontract by Department of the Navy prime contractor are dismissed because the subcontract award does not meet any of the circumstances under which GAO considers subcontractor protests.

Worldwide Direct Marketing (Worldwide) and Market Compilation and Research Bureau, Inc. (MCRB) protest the award of a subcontract to LCS Industries, Inc. (LCS) under request for proposals (RFP) No. 0223, issued by Ted Bates Advertising/New York (Bates). Bates is the prime contractor for the Navy's nationwide recruitment advertising campaign under contract No. N00600-82-C-0001. Worldwide and MCRB protest on the basis that LCS was not the "low, qualified bidder" and that the subcontract award is therefore not in the best interest of the Government. We dismiss the protests because they do not meet any of the limited circumstances under which our Office will review subcontractor protests.

The Bates contract, a cost reimbursement type, is for a national advertising campaign to recruit and retain Navy personnel. Bates is responsible for the creative services necessary to conduct the campaign, placing the advertising as appropriate, for conducting the campaign itself, and such other ancillary services as are necessary. The subcontract in question is for data processing and related services necessary to assist Bates.

According to the Navy, the Government's involvement with subcontracting was limited to approving the subcontracting plan and approving the subcontract as required by Defense Acquisition Regulation § 7-203.8 (1976 ed.). The Navy states that it does not participate in the subcontractor solicitation or selection process.

025632

In Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166, we delineated the limited circumstances under which we would consider subcontractor protests:

- (1) where the prime contractor is acting as a purchasing agent of the Government;
- (2) where the Government's active or direct participation in the selection of the subcontractor has the net effect of causing the rejection or selection of a potential subcontractor, or of significantly limiting subcontractor sources;
- (3) where possible fraud or bad faith is shown in the Government's approval of the subcontract award or proposed award;
- (4) where the subcontract is "for" an agency of the Government; or
- (5) where the questions concerning the award of subcontracts are submitted by Federal officials entitled to advance decisions by this Office.

Bates is clearly not acting as a purchasing agent for the Government, there has been no allegation of fraud or bad faith in the subcontract approval process and no Federal official has requested an advance decision from us. Thus, factors (1), (3) and (5) of the Optimum Systems test can be disregarded. Moreover, since the Government has taken no part in the subcontractor selection process, circumstance (2) is also not applicable.

We have traditionally considered subcontracts "for" the Government to include only 1) those awarded by prime contractors operating and managing Department of Energy facilities, 2) purchases of equipment for Government-owned, contractor-operated plants, and 3) procurements by construction management prime contractors under cost-type contracts. AMRAY Inc., B-207261, June 11, 1982, 82-1 CPD 561. This subcontract is therefore not one that is "for" the Government as we have used that term.

B-210726; B-210726.2

Accordingly, as none of the circumstances found in Optimum Systems are present here, the protests are dismissed.

For *F. H. Barclay, Jr.*
Harry R. Van Cleve
Acting General Counsel