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**DECISION**



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

FILE: B-210656

DATE: August 4, 1983

MATTER OF: Holiday Homes of Georgia, Inc.

**DIGEST:**

1. GAO will review awards of subcontracts made by prime contractors operating Government-owned facilities because such subcontract awards are "for" the Government.
2. Protest issue not timely raised in protest to agency will not be considered in subsequent protest to GAO.
3. Prime contractor acted properly in not granting a preference to a women-owned business in award of subcontract since solicitation did not provide for such a preference.

Holiday Homes of Georgia, Inc. (Holiday), protests the award of a subcontract to Triple "A" Custom Builders (Triple "A") for mobile homes by the RCA Service Corporation (RCA), the prime contractor operating, maintaining and supporting the Department of the Navy's (Navy) Atlantic Undersea Test and Evaluation Center, Andros Islands, Bahamas.

We dismiss the protest in part and deny it in part.

Holiday contends that RCA failed to comply with a solicitation provision favoring women-owned businesses, and that RCA and Triple "A" interfered with a contractual relationship between Holiday and RCA. Holiday also alleges that collusive action between RCA and Triple "A" violated antitrust laws and requests that we refer the matter to the Attorney General.

As a preliminary matter, we generally do not review awards of subcontracts by Government prime contractors, except in limited circumstances. Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. Holiday argues that

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two of the circumstances in which we will review subcontracts are present here: the prime contractor is a purchasing agent for the Government, and elements of bad faith or fraud are involved. The Navy argues that neither of those circumstances is present here, and that we should dismiss the entire protest.

We find that our review here is warranted under another of that decision's circumstances--the prime contractor is managing or operating a Government-owned facility and, thus, the subcontract award is "for" the Government. CMI Corporation, B-205829, September 8, 1982, 82-2 CPD 204; Kahle Engineering Company, B-198563, October 8, 1980, 80-2 CPD 256.

The exact nature of Holiday's allegation that RCA and Triple "A" interfered with a contractual relationship between RCA and Holiday is unclear from the record; however, this allegation is dismissed because it was not timely filed. Holiday was notified of the award to Triple "A" on December 3, 1982, and protested to RCA on December 6. That protest did not raise this issue. On December 21, Holiday filed a protest with the Navy which raised the interference with contractual relations issue for the first time. The Navy reports that no new information was provided to Holiday between December 3 and December 21 that could have been the basis for raising the issue. Holiday has not rebutted this contention, and a letter of January 12, 1983, from Holiday to the Navy indicates that the issue is based on Holiday's preaward involvement in this procurement and award to Triple "A."

When a protest is filed initially with the contracting agency, we will consider a subsequent protest only if the initial protest was timely filed. 4 C.F.R. § 21.2(a) (1983). To be timely filed, a protest must be filed within 10 working days of the time that the protester knows of the basis for the protest. 4 C.F.R. § 21.2 (b)(2) (1983). Here, the contractual interference issue was raised initially in the December 21 protest to the Navy, more than 10 working days after the basis for it was known, so it was not timely filed with the agency. Consequently, we will not consider it.

Holiday argues that even though it was not the low offeror, it is a women-owned business and should be given a preference for award of the subcontract based on a provision in the solicitation. The solicitation provision concerning women-owned businesses does no more than state that it is the policy of the United States that women-owned businesses shall have the maximum practicable opportunity to participate in

Federal contracts and that RCA agrees to use its best efforts to carry out the policy consistent with the efficient performance of its contract. The provision provides no basis to give preference to a women-owned firm in determining which firm is to be awarded the subcontract. Therefore, it would have been improper for RCA to grant such a preference to Holiday. Medical Gas and Respiratory Services, Inc., B-207360, June 2, 1982, 82-1 CPD 529.

Finally, Holiday alleges that collusion between RCA and Triple "A" violated antitrust laws. Holiday realizes that we do not consider such allegations, but requests that we notify the Attorney General of possible antitrust violations pursuant to 41 C.F.R. subpart 1-1.9 (1982). However, that subpart provides that the head of a civilian Federal contracting agency refer bids or proposals in direct Federal procurements to the Attorney General when in his opinion they evidence antitrust violations. We note that the Defense Acquisition Regulation (DAR) contains a corresponding provision for military agencies. DAR § 1-111 (1976 ed.). Therefore, Holiday may forward any evidence of antitrust violations to the Navy for its consideration and possible referral, or it may forward the evidence directly to the Attorney General. KDH Corporation and Richard W. Bates, Joint Venture, B-209207, December 14, 1982, 82-2 CPD 532; Inflated Products Company, Inc., B-190877, May 11, 1978, 78-1 CPD 362.

Protest dismissed in part and denied in part.

*for*   
Comptroller General  
of the United States