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DECISION



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

FILE: B-212945

DATE: October 12, 1983

MATTER OF: G&R Supply Co.

DIGEST:

Federal policy prohibiting discriminatory employment practices based on sex or race does not obligate a prime contractor to subcontract with any particular minority women-owned concern.

G&R Supply Co. protests the award by the Army of a contract to Ball, Ball and Brosamer, Inc. under invitation for bids DAHA02-83-B-0005. We summarily deny the protest.

According to the protester, it is a minority women-owned concern and has been discriminated against by the awardee because that firm failed to respond to a letter from the protester informing it that G&R expected to furnish materials, reinforcing steel and mesh as a subcontractor on this project. G&R contends that prime contractors are obligated to respond to minority subcontractors under the terms of Executive Order 11,246 concerning nondiscrimination in employment by government contractors and subcontractors.

Executive Order 11,246, 3 C.F.R. 339 (1964-1965 Comp.), as amended by Executive Order 11,375, 3 C.F.R. 320 (1967 Comp.), establishes a policy prohibiting discriminatory employment practices based on sex or race. Neither it nor the rules and regulations that implement it, however, create any obligation by a prime contractor to subcontract with any particular minority women-owned concern. Thus, the Executive Order does not require the intended awardee in this case to purchase supplies from G&R.

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The Small Business Act, 15 U.S.C. § 637(d) (1982), does require that government contracts, with certain exceptions, contain language in which an awardee agrees to carry out, to the fullest extent consistent with efficient performance, a policy that maximum practicable opportunity to participate in contract performance be given to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. We also note that Executive Order 12,138, 3 C.F.R. 393 (1980 Comp.), and the implementing regulations at Defense Acquisition Regulation §§ 1-708 and 7-104.52 (1976 ed.) encourage prime contractors to include women-owned businesses in the performance of contracts exceeding \$25,000. A prospective awardee's willingness to act in those respects, however, concerns the firm's responsibility which, as a matter for the contracting agency's judgment, we generally do not review. Equipment Renewal Company, B-211051, March 30, 1983, 83-1 CPD 332. Also, enforcement of the awardee's obligations under these provisions is a matter of contract administration, which this Office does not consider. Sierra Medical Cushion Company, B-211377, May 6, 1983, 83-1 CPD 477.

Finally, we point out that our Office does not review a protest of a prime contractor's selection of another subcontractor unless one of the following circumstances outlined in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166, exists:

- (1) the prime contractor is acting as a purchasing agent of the government;
- (2) 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) possible fraud or bad faith is shown in the government's approval of the subcontract award or proposed award;

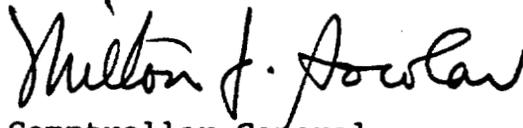
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(4) the subcontract is "for" an agency of the government; or

(5) the questions concerning the award of subcontracts are submitted by federal officials entitled to advance decisions by this Office.

None of these circumstances is involved here.

The protest is denied.

for 
Comptroller General
of the United States