

**DECISION**

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

**FILE:** B-215583.2

**DATE:** August 9, 1984

**MATTER OF:** DeVac Chamberlain, Inc.--  
Reconsideration

**DIGEST:**

1. GAO, except in limited circumstances, will not review a potential subcontractor's protest of the award of a subcontract. Additional material submitted in protester's reconsideration request does not indicate that any of the circumstances under which our Office reviews subcontractor protests are present here.
2. Absent evidence that at the time of award agency intended to modify contract after award, agency's decision to modify a contract and to accept nonconforming goods is a matter of contract administration within the authority and responsibility of the procuring agency.

DeVac Chamberlain, Inc. (DeVac), requests reconsideration of our decision in DeVac Chamberlain, Inc., B-215583, July 3, 1984, 84-2 C.P.D. ¶ \_\_\_\_\_. DeVac, a potential supplier, protested the proposed acceptance of nonconforming materials under three separate contracts awarded by the Department of the Air Force. DeVac argued that the prime contractors under those contracts were offering products which did not meet contract requirements. We dismissed DeVac's protest since it did not appear that any of the limited circumstances in which we review subcontractor protests were present and, also, because the issue raised by DeVac involved a matter of contract administration.

In its reconsideration request, DeVac argues that it satisfies the requirements for a subcontractor protest since the prime contractors on these projects are acting as purchasing agents "for" the government. Also, DeVac contends that since the projects were bid in reliance on the specifications that were issued, permitting the Air Force to waive those specifications provides an unfair advantage to those awarded the contracts.

029703

Under the criteria set forth in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 C.P.D. ¶ 166, our Office will review a subcontractor protest only in limited circumstances. In this regard, we generally decline to consider subcontractor complaints unless it can be shown that the government's participation in the award process had the effect of causing the selection of the subcontractor in question and, therefore, that the award of the subcontract was made "for" the government. See Copeland Systems, Inc., 55 Comp. Gen. 390, 395 (1975), 75-2 C.P.D. ¶ 237. The mere fact that goods are ultimately used by the government or that the government was involved in the selection of the particular goods offered is insufficient to invoke our jurisdiction. Ingersoll-Rand Company; Sullair Corporation, B-207246.2; B-211811, Sept. 28, 1983, 83-2 C.P.D. ¶ 385; United Lighting and Ceiling Corporation--Reconsideration, B-190464, June 22, 1978, 78-1 C.P.D. ¶ 453. Furthermore, we have held that a prime contractor acts as a purchasing agent for the government only where the prime contractor is authorized to act as the government's agent and the legal effect of the contractor's actions is binding on the government. Ecological Research Sciences, Inc., B-209358, April 22, 1983, 83-1 C.P.D. ¶ 442. We see nothing in the additional materials submitted by DeVac which would indicate that any of the circumstances under which our Office reviews subcontractor protests are present here.

In addition, we note that our Bid Protest Procedures, 4 C.F.R. part 21 (1984), are reserved solely for determining whether an award or proposed award complies with statutory, regulatory or other legal requirements. In that context, we will review a protester's complaint that an agency has awarded a contract on terms that vary materially from those upon which the competition was based. See Environmental Tectronics Corporation, B-209423, Jan. 24, 1983, 83-1 C.P.D. ¶ 81. However, absent any evidence that the agency intended at the time of award to modify the contract after award, an agency's decision to modify a contract and to accept goods which in fact do not meet all specifications, instead of terminating the contract and meeting the agency's needs through another source, is a matter of contract administration within the authority and responsibility of the procuring agency. BVI Engravers, B-208830, Oct. 20, 1982, 82-2 C.P.D. ¶ 351.

Accordingly, our prior decision is affirmed.

*for* Milton J. Forster  
Comptroller General  
of the United States