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DECISION



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

FILE: B-221851.2 **DATE:** June 26, 1986
MATTER OF: Ocean Enterprises, Ltd.--Reconsideration

DIGEST:

The General Accounting Office affirms its dismissal of a protest on the grounds that the prime contractor is not acting for the government in awarding subcontracts where the protester has not shown that the prime contractor is principally providing large-scale management services at a government-owned facility.

Ocean Enterprises, Ltd. (OEL), requests reconsideration of our decision, Ocean Enterprises, Ltd., B-221851, May 22, 1986, 65 Comp. Gen. ____, 86-1 C.P.D. ____. In that decision, we dismissed OEL's protest of the award of a subcontract to Buccaneer Marine, Ltd. (Buccaneer), under request for quotations (RFQ) No. 34-468-00 issued by Science Applications International Corporation (SAIC), a prime contractor performing services for the United States Department of the Navy at the Santa Cruz Acoustical Range Facility (SCARF), Santa Cruz Island, California. We affirm our prior decision.

We dismissed the protest because we concluded that SAIC was not awarding the subcontract "for" the government within the meaning of the exception allowing for review of subcontract awards by our Office, see Bid Protest Regulations, 4 C.F.R. § 21.3(f)(10) (1986), because the prime contractor is not operating a government-owned facility and is not otherwise serving as a mere conduit between the government and the subcontractor.

In requesting reconsideration, OEL first argues that our decision to dismiss its protest is inconsistent with a previous GAO decision, Holiday Homes of Georgia, Inc., B-210656, Aug. 4, 1983, 83-2 C.P.D. ¶ 169, which should control this case. In Holiday Homes, we found that a Navy acoustical testing facility, the Atlantic Undersea Test and Evaluation Center (AUTEC), Andros Islands, Bahamas, was a government-owned facility being managed or operated by a prime contractor and, consequently, that the subcontract was "for" the government and would be reviewed by our Office. OEL maintains that AUTEC performs functions identical to

SCARF and argues that since we reviewed the procurement involving AUTECH in Holiday Homes, we should also review this procurement.

Initially, we note that in Holiday Homes we concluded that AUTECH was a government-owned facility being managed or operated by a prime contractor. Even assuming that the functions performed at AUTECH and SCARF are identical, there is no indication in the record of this case or Holiday Homes that these facilities are being managed in a similar manner. There is also no indication that the facilities are similar in nature, that is, that AUTECH, like SCARF, is based on land leased by the prime contractor from a private owner and does not have a permanent facility or plant. Therefore, we have no basis for a finding that this situation is similar to that in Holiday Homes and, consequently, should be controlled by that decision.

OEL next argues that, in our prior decision, we erroneously based our conclusion that SCARF is not a government-owned facility on the Navy's failure to follow its internal procedures for the establishment and maintenance of government-owned, contractor-operated (GOCO) facilities and the fact that the Navy does not own the land on which SCARF is based. The protester cites J.C. Yamas Company, B-211105, Dec. 7, 1983, 83-2 C.P.D. ¶ 653, as standing for the proposition that ownership of land by the government is immaterial as to whether our Office will review a subcontract award.

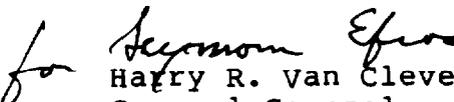
We agree with OEL that the fact that the Navy has not made any determination under its procedures for the establishment and maintenance of GOCO's alone does not establish that SCARF is not a GOCO; however, the fact that no determination has been made does indicate that the Navy, contrary to OEL's assertions, did not regard SCARF as a GOCO. As to the ownership of the land, we indicated in our prior decision that in order for a facility to be a GOCO, the government must own the facility. Generally, a facility refers to the land and any constructed buildings and fixtures located on that land. Here, the Navy does not own the land on which SCARF is based and there is no permanent building or plant on the site and, while, as OEL points out, the government obviously owns the government-furnished equipment (GFE) at SCARF, the equipment itself does not constitute the facility. Further, our finding of jurisdiction in J.C. Yamas Company, B-211105, supra, is inapplicable here because in that case the land on which the government facility was

based was owned in part by a private company and in part by the government, whereas here the government does not own any of the land at the site. Moreover, jurisdiction in that case was based on grounds other than a finding that the subcontract award was made by a firm operating or managing a government-owned facility.

Finally, OEL argues that a review of SAIC's contract with the Navy indicates that, contrary to our prior decision, SAIC provides large-scale management services. SAIC asserts that this is evidenced by the fact that the contract indicates that SAIC reports to Navy personnel located in Bremerton, Washington, and there is nothing in the record showing that there is any Navy personnel based at SCARF or that the Navy manages the project operations at the site. It also asserts that the contract provision that only 10 percent of the man-hours necessary to perform this contract are for managerial/operation functions does not establish that SAIC does not provide management services since SCARF is a research/technical facility and there can be only so many managers to perform such a contract. OEL further argues that SAIC purchases or leases all of the equipment at SCARF at the government's written direction and cost and such equipment becomes GFE and, thus, SAIC has ongoing purchasing responsibility resulting from its management services.

We disagree with OEL's interpretation of the Navy's contract with SAIC. Even assuming that Navy personnel are not present at SCARF, management of project operations at SCARF easily could be performed by Navy personnel from off-site locations and, as stated in our decision, our review of the contract indicates that the Navy in fact manages the project operations while SAIC provides maintenance and operational assistance to the Navy. Specifically, the conducting of experiments and tests at SCARF requires large-scale management services, but the fact that management services constitute less than 10 percent of the services under the contract indicates that the contract is not principally for such services. Furthermore, SAIC's purchasing responsibilities are incidental to performance of its support and maintenance tasks specified under the contract and are not connected with operation of the facility.

We affirm our prior decision.

for 
Harry R. Van Cleve
General Counsel