



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: FL Aerospace Corporation

File: B-231414

Date: June 21, 1988

DIGEST

Protest of a subcontract awarded by a government prime contractor is dismissed where the subcontract was not "by or for" the government.

DECISION

FL Aerospace Corporation protests the award of a subcontract to Hella KG by Aero Electronics, Inc., the prime contractor under Department of the Air Force contract No. F09603-88-C-0542 for the retrofit installation of strobe lights in certain aircraft. FL Aerospace contends that Aero Electronics, acting under the Air Force's direction when it requested FL Aerospace's quote for strobe lights, failed to disclose the evaluation factors upon which selection would be based, and that the evaluation of FL Aerospace's proposal was not fair, reasonable or consistent with the stated evaluation criteria. In addition, FL Aerospace alleges that its protest raises significant issues relevant to the integrity of the procurement system, flight safety, and cost to the government.

We dismiss the protest because the subcontract was not awarded by or for a federal agency.

Before enactment of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551 (Supp. III 1985), we reviewed subcontractor protests in those limited situations where the government so actively or directly participated in the selection of the subcontractor that the net effect was to cause or control the prime contractor's selection or rejection of a particular firm. See Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD ¶ 166.

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Under CICA, however, which gives our Office jurisdiction to decide protests involving solicitations and awards by federal agencies, the government's alleged control of the subcontractor selection is not dispositive in terms of whether we will review a subcontractor protest. See Rohde & Schwarz-Polarad, Inc.--Reconsideration, B-219108.2, July 8, 1985, 85-2 CPD ¶ 33. We have interpreted our CICA jurisdiction to include protests of subcontract solicitations and awards only when the subcontract is "by or for the government." 4 C.F.R. § 21.3(m)(10) (1988). Basically, a subcontract is considered to be by or for the government when the prime contractor principally provides large-scale management services to the government and, as a result, generally has an ongoing purchasing responsibility. In effect, the prime contractor essentially acts as a middleman or conduit between the government and the subcontractor. American Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD ¶ 503. Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse Electric Corp., B-227091, Aug. 10, 1987, 87-2 CPD ¶ 145, otherwise provides large-scale management services, Union Natural Gas Co., B-224607, Jan. 9 1987, 87-1 CPD ¶ 44, serves as an agency's construction manager, C-E Air Preheater Co., Inc., B-194119, Sept. 14, 1979, 79-2 CPD ¶ 197, or functions primarily to handle the administrative procedures of subcontracting with vendors effectively selected by the agency, University of Michigan, et al., B-225756 et al., June 30, 1987, 66 Comp. Gen. ___, 87-1 CPD ¶ 643. Except in these limited circumstances, where the prime contractor basically is acting as the government's agent, a subcontract awarded by a government contractor in the course of performing a prime contract generally is not considered to be "by or for" the government. See Techniarts Engineering, B-230263, Mar. 30, 1988, 88-1 CPD ¶ 323.

The record shows that the Air Force refused to consider FL Aerospace's agency-level protest stating that, as a potential subcontractor, the firm was not an actual or prospective offeror on a government solicitation and therefore was not an interested party to protest. The Air Force also noted that Aero Electronics was not acting as a conduit for the Air Force since the selection of a subcontractor was totally the responsibility of the prime contractor.

FL Aerospace argues that we should consider the protest even though Aero Electronics, and not the Air Force, did the purchasing because Aero Electronics was acting as a conduit for the agency. FL Aerospace asserts that the Air Force effectively specified to Aero Electronics the FL Aerospace part for which to request a quotation from the firm because,

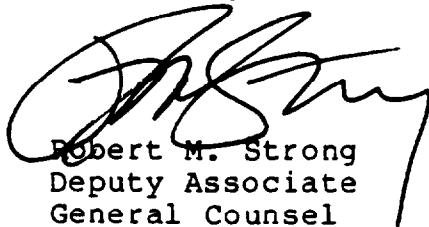
pursuant to a memorandum of agreement with FL Aerospace, the Air Force would have unlimited data rights to that part if purchased by the government. FL Aerospace asserts that this action restricted the firm's ability to compete on an equal basis with other subcontractors by supplying a less expensive part.

We do not find this case to fall within any of the limited circumstances in which we will review a subcontractor protest. The procurement for installation of strobe lights on aircrafts is for a limited purpose and does not entail ongoing purchasing responsibilities. Further, while FL Aerospace alleges that the Air Force directed the prime contractor to solicit certain FL Aerospace parts, thereby restricting FL Aerospace's ability to supply a less expensive part, that factor is not dispositive with respect to our CICA authority, as discussed above. Moreover, we note that the record includes a letter dated May 24, 1988, to our Office from Aero Electronics stating:

" . . . it was [FL Aerospace] that selected these units as their best lights to fit the contract requirements. We would have gladly accepted an alternate light if one had been available or suggested to us by [FL Aerospace]."

Aero Electronics' letter further states that after the prime contractor selected Hella KG, FL Aerospace submitted two consecutive quotations with even lower prices, but by then it was too late for Aero Electronics to change subcontractors.

In sum, FL Aerospace's allegations do not establish that the prime contractor is functioning as the government's agent in the procurement. See Techniarts Engineering, B-230263, supra. Since Aero Electronic's subcontract with Hella KG thus is not by or for the government within the meaning of our Regulations, FL Aerospace's protest of that award is dismissed.


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