



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ames Company, Inc.--Request for Reconsideration
File: B-233314.2, B-233315.2
Date: December 15, 1988

DIGEST

Prior dismissals of protests alleging that subcontracts for foreign products awarded by a government prime contractor were improper are affirmed since even if the government directed the selection of the subcontractors as alleged, the subcontract awards were not made by or for the government.

DECISION

Ames Company, Inc. requests reconsideration of our decisions to dismiss its protests of the award of two contracts by C.R. Frederick, Inc. under solicitation Nos. 8-SI-40-06240/DC/7746 (solicitation No. 7746) and 8-51-40-95640/DC/7552 (solicitation No. 7552). We dismissed the protests because they did not involve any of the limited circumstances under which we review challenges to subcontract awards. We affirm the prior dismissals.

It appears from the protest that C.R. Frederick, a prime contractor with the Bureau of Reclamation, United States Department of the Interior, for a salinity control project, made an award for control valves to Bermad Irrigation Controls, Inc., an Israeli firm under solicitation No. 7746 and an award to another Israeli firm, Inbal, for pressure reducing valves under solicitation No. 7752. Ames argued in its initial protests that the selection of Israeli products violated the solicitations' Buy American Act provisions. Ames objects to our dismissal of its protests based on its view that the actual selection of the foreign products was made by the agency rather than by the prime contractor.

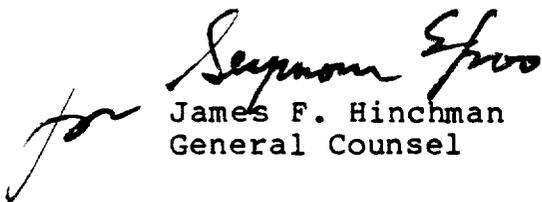
Our Office only reviews subcontract awards by the government's prime contractors where the award is "by or for the government." Bid Protest Regulations, 4 C.F.R. § 21.3(f)(10) (1988). Basically, a subcontract is considered to be by or for the government when the prime contractor principally provides large scale management

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services to the government and, as a result, generally has an ongoing purchasing responsibility. In effect, the prime contractor acts as a middleman 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., 66 Comp. Gen. 538 (1987), 87-1 CPD ¶ 643. Except in these limited circumstances, 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.

Ames has not provided us with any information concerning the nature of the prime contract upon which we can conclude that the prime contract involved here fits within any of the above listed exceptions. Further, while Ames has alleged that the government in both awards effectively directed the selection of the subcontractor, this alone does not indicate that the prime contractor is acting as the government's agent in the procurement, which, under the circumstances here, is the only basis upon which we would review the subcontract awards. Techniarts Engineering, B-230263, supra.

The prior decisions are affirmed.


James F. Hinchman
General Counsel