

G. L. Hooley



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Barshfield, Inc.

File: B-235575

Date: July 11, 1989

DIGEST

Protest of a subcontract awarded by a government prime contractor is dismissed for lack of jurisdiction where the subcontract award was not "by or for" the government; government's exercise of its right under prime contract to approve or disapprove prime contractor's selection of subcontractor is not enough to invoke jurisdiction.

DECISION

Barshfield, Inc., protests the award of a subcontract to Shield-Rite, Inc., by Kaiser Engineers, Inc. for radio-frequency-shielded doors. Kaiser is the prime contractor under the U.S. Army Corps of Engineers cost plus award fee contract No. DACA45-87-C-0174 for construction of the National Test Facility for the Strategic Defense Initiative Organization at Falcon Air Force Station, Colorado.

The Army's position is that we should not consider this protest because it involves a subcontract award over which our Office does not take jurisdiction. We agree. Because the contract was not awarded by or for a federal agency, we dismiss the protest.

Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551(1) (Supp. IV 1986), this Office has jurisdiction to decide protests involving contract solicitations and awards by federal agencies. We have interpreted this provision as authorizing us to decide 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 where the prime contractor principally provides large-scale management services to the government and, as a result, generally has ongoing purchasing responsibility. In effect, the prime contractor

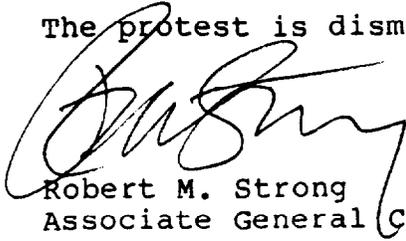
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acts as a middleman or a conduit between the government and the subcontractor. American Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD ¶ 503. Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse 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., 66 Comp. Gen. 538 (1987), 87-1 CPD ¶ 643. Except in these limited circumstances in which the prime contractor is basically 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 "by or for the government." Michael L. Cook, Inc.--Request for Reconsideration, B-234940.2, May 11, 1989, 89-2 CPD ¶ ____.

We do not believe this case falls within any of the above limited circumstances. Although Barshfield notes that the construction work is to be performed on government property, this fact is not dispositive in terms of whether we will review a subcontractor protest. See The Pickering Firm, Inc.,--Reconsideration, B-235117.2, May 11, 1989, 89-2 CPD ¶ ____. A review of Kaiser's prime contract with the Army also indicates that Kaiser is not providing large-scale management services as described above, but rather is performing a construction project with a limited purpose. See Poitra Constr. Co., 67 Comp. Gen. 384 (1988), 88-1 CPD ¶ 386. While Barshfield has alleged that the government 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 is the only basis upon which we would review the subcontract award. Ames Co., Inc.--Request for Reconsideration, B-233314.2 et al., Dec. 15, 1988, 88-2 CPD ¶ 597; Techniarts Eng'g, B-230263, Mar. 30, 1988, 88-1 CPD ¶ 323. In fact, the government's only involvement in the selection process of the subcontractor was to twice disapprove Kaiser's selection of Barshfield because the Barshfield door did not meet the solicitation's specifications. This is not enough for our Office to assume jurisdiction. See Edison Chouest Offshore, Inc., Polar Marine Products, B-230121.2; B-230121.3, May 19, 1988, 88-1 CPD ¶ 477. It was Kaiser's ultimate evaluation and rejection of Barshfield's offer and

selection of the awardee that forms the basis of the protest, not the government's involvement.

The protest is dismissed.

A handwritten signature in black ink, appearing to read "R. Strong", written over the typed name.

Robert M. Strong
Associate General Counsel