

Spiegel



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Reach All, Inc.--Reconsideration

File: B-239848.3

Date: November 29, 1990

Jeanine Cogswell for the protester.
S.J. Evans, National Aeronautics and Space Administration, for the agency.
Robert A. Spiegel, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office has no bid protest authority to review an award of a subcontract by a prime contractor when the subcontract procurement was not made "by or for the government."

DECISION

Reach All, Inc. requests that we reconsider our dismissal of its protest regarding the award of subcontract No. PCSP2-02, by Pioneer Contract Services, Inc., for a cherry picker, to U.E.C. Equipment Co., in connection with a prime contract between Pioneer and the National Aeronautics and Space Administration (NASA). We dismissed that protest because our Office has no jurisdiction to review an award of a subcontract by a prime contractor unless the subcontract is "by or for the government." 4 C.F.R. § 21.3(m)(10) (1990).

Reach All requests that we reconsider this dismissal because the prime contractor has engaged in "unfair purchasing practices," which "ha[ve] nothing to do with subcontractor selection."

Notwithstanding Reach All's characterization of its protest, it does concern the selection of a subcontractor. We have limited authority to review protests of subcontract procurements of prime government contractors because the Competition in Contracting Act of 1984 (the basis for our bid protest jurisdiction), authorizes our Office to consider bid protests of procurements by "federal agencies." See 31 U.S.C. § 3551 et seq. (1988). A prime contractor is not considered to be a federal agency and will not be regarded as

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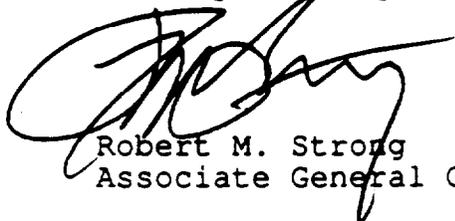
such merely because it awards a subcontract pursuant to a prime contract with the government. Aviation Data Serv.--Recon., B-238057.2, Apr. 11, 1990, 90-1 CPD ¶ 383. We will take jurisdiction only in those situations where the prime contractor is essentially acting "by or for the government."

Generally, a subcontract is considered to be "by and for the government" where the prime contractor principally provides large-scale management services to the government and, as a result, generally has on-going purchasing responsibility. In effect, the prime contractor 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:

- (1) operates and manages a government facility, Westinghouse Elec. Corp., B-227091, Aug. 10, 1987, 87-1 CPD ¶ 145;
- (2) otherwise provides large-scale management services, Union Natural Gas Co., B-224607, Jan. 9, 1987, 87-1 CPD ¶ 44; or
- (3) functions primarily to handle the administrative procedures of subcontracting with vendors actually selected by the agency. University of Mich. et al., 66 Comp. Gen. 538 (1987), 87-1 CPD ¶ 643. In other circumstances, we will only assume jurisdiction where the government's involvement in the subcontractor selection is so pervasive that the contractor is a mere conduit for the government. See Perkin-Elmer Corp., B-237076, Dec. 28, 1989, 89-2 CPD ¶ 604.

Pioneer does not provide large-scale management services or operate and manage a government facility, but rather provides various logistics support services at the Johnson Space Center. The record indicates that NASA has minimal involvement in the selection of the subcontractor. Thus, Pioneer was not acting "by or for the government" when it selected the subcontractor to provide the cherry picker. Aviation Data Serv.--Recon., B-238057.2, supra. Under the circumstances, we have no authority to consider this protest.

We deny the request for reconsideration.



Robert M. Strong
Associate General Counsel