



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Radiation Systems, Inc.

**File:** B-244561

**Date:** October 16, 1991

Harold Aryai Siegel for the protester,  
Robert C. Pool, Esq., Jet Propulsion Laboratory, California  
Institute of Technology, for the prime contractor,  
Darleen A. Druyun, National Aeronautics and Space  
Administration, for the agency.  
Glenn G. Wolcott, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Protest challenging solicitation provisions is dismissed as untimely where the alleged improprieties were apparent from the face of the solicitation and protester did not file its protest until after the closing date for submission of proposals.

### DECISION

Radiation Systems, Inc. (RSI) protests the terms of a solicitation issued by the Jet Propulsion Laboratory (JPL)<sup>1</sup>, a federally funded research and development center (FFRDC), for the National Aeronautics and Space Administration (NASA). The solicitation sought proposals for a 34-meter multi-frequency beam waveguide antenna. RSI protests that the solicitation unduly restricts competition and requests that the solicitation be canceled.

We dismiss the protest.

Under JPL's FFRDC contract with NASA, JPL is obligated to "support NASA . . . in the formulation of plans and programs; in the preparation of analyses and studies; and in the performance of research, technical development and

<sup>1</sup> JPL is an operating division of the California Institute of Technology.

project assignments relating to virtually all programmatic areas within NASA's responsibility." JPL issued the solicitation challenged by RSI pursuant to JPL's obligations under its FFRDC contract.

NASA and JPL have both asserted that our Office does not have jurisdiction to consider the protest because RSI is challenging a subcontract award by a prime contractor of the government--not a procurement by a federal agency. In this regard, our Office has jurisdiction under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551(1) (1988), to decide bid 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 where the subcontract is "by or for the government." 4 C.F.R. § 21.3(m) (10).

Because of the variety of relationships between federal agencies and FFRDCs, we cannot say that an FFRDC such as JPL is acting "by or for the government" simply by virtue of its FFRDC status. See SRI International, B-237779, Mar. 22, 1990, 90-1 CPD § 318. Rather, we review the specific contractual relationship between the government and the FFRDC under the prime contract to determine whether the contractor principally provides large-scale management services to the government or in effect acts as a middleman or conduit between the government and the subcontractor. See SRI International, supra; Am. Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD § 503.<sup>2</sup>

Here, JPL is specifically obligated under its FFRDC contract to, among other things, serve as the principal NASA center for solar system exploration; plan, research, develop, implement and operate NASA's Deep Space Network; and participate in NASA's technology utilization program to apply aerospace technology to non-aerospace applications. In addition, the FFRDC contract contemplates that JPL may use up to 25 percent of its overall available workforce to perform similar research and development tasks for non-NASA sponsors.

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<sup>2</sup> Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse Elec. Corp., B-227091, Aug. 10, 1987, 87-2 CPD § 145, otherwise provides large scale management services in a government facility, 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. Univ. of Michigan, et al., 66 Comp. Gen. 538 (1987), 87-1 CPD § 643.

Based on the requirements of JPL's FFRDC contract, it does not appear that JPL "principally provides large-scale management services" or "acts as a middleman or a conduit between the government and the subcontractor" pursuant to that contract.<sup>3</sup> See SRI International, supra. Nonetheless, we need not resolve the issue of jurisdiction since, as discussed below, RSI's protest is otherwise dismissable.

JPL issued the solicitation for 34-meter antennas which Radiation Systems challenges on February 19, 1991. The solicitation provided that proposals were to be submitted by June 17, 1991. Radiation Systems' protest was not filed (received) in JPL's office until June 18, 1991, or in our Office until June 21, 1991.

Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Accordingly, even if we were to determine that JPL was acting "by or for the government," RSI's protest is not for consideration since it was untimely filed under our Bid Protest Regulations.<sup>4</sup>

The protest is dismissed.



Paul I. Lieberman  
Assistant General Counsel

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<sup>3</sup> The record indicates that, in addition to the FFRDC contract, NASA and JPL are parties to a facilities contract. Our consideration of JPL's relationship with NASA did not include an analysis of the facilities contract.

<sup>4</sup> We also note that in its response to RSI's protest JPL provided a point-by-point explanation regarding the specific factors necessitating the solicitation provisions which RSI challenged; RSI's comments do not provide any substantive response to JPL's explanations.