



Comptroller General
of the United States

120026

Washington, D.C. 20548

Decision

Matter of: Jewel Elevator Service, Inc.

File: B-257240

Date: June 2, 1994

DECISION

Jewel Elevator Service, Inc. protests the award of a subcontract by Robertshaw Controls Systems to Montgomery Elevator, to repair and refurbish elevators at the Bayne-Jones Army Community Hospital in Fort Polk, Louisiana.

We dismiss the protest.

On September 18, 1992, the Department of the Army awarded a time and materials contract to Robertshaw for quick response remediation services at Army installations. In June 1993, the agency issued a delivery order under Robertshaw's contract to repair and refurbish several elevators at Bayne-Jones Army Community Hospital in Fort Polk, Louisiana. The agency did not require Robertshaw to use a particular firm to perform the required services, and the delivery order simply requested that Robertshaw "identify all subcontracts that will be used for this delivery order."

In response to the agency's request, Robertshaw proposed Montgomery, the original elevator manufacturer, as the subcontractor for the project. The Army approved that proposal,¹ and on January 14, 1994, Robertshaw awarded a subcontract to Montgomery for the required work. This protest to our Office followed. Jewel contends that it was prevented from competing for the subcontract.

Our Office does not review subcontract awards by government prime contractors except where the award is by or for the government. 4 C.F.R. § 21.3(m)(10) (1994). This limitation on our review is derived from the Competition in Contracting

¹Robertshaw's contract contains the clause found at Federal Acquisition Regulation § 52.244-3, which requires the prime contractor to obtain the contracting officer's written consent before awarding a subcontract. The agency states that except for concurring in the selection of Montgomery as the subcontractor, the Army played no role in the selection of that firm by Robertshaw.

Act of 1984, 31 U.S.C. §§ 3551 et seq. (1988), which limits our bid protest jurisdiction to protests concerning solicitations issued by federal contracting agencies. In the context of subcontractor selections, we interpret the Act to authorize our Office to review subcontractor protests only where, as a result of the government's involvement in the award process or due to the contractual relationship between the prime contractor and the government, the subcontract is in effect awarded on behalf of the government.² Edison Chouest Offshore, Inc.; Polar Marine Partners, B-230121.2; B-230121.3, May 19, 1988, 88-1 CPD ¶ 477. Here, although the agency retained approval authority over the selection of Montgomery, that factor alone does not constitute the active and direct participation in the selection process required before we will find that a subcontract has essentially been awarded "by or for the government." See Kerr-McGee Chemical Corp., B-252979, May 3, 1993, 93-1 CPD ¶ 358; Atlantic Marine, Inc., B-236273, Nov. 21, 1989, 89-2 CPD ¶ 483. Accordingly, we will not review the matter.

To extent that Jewel argues that the award of the subcontract to Montgomery to work on the elevators constitutes a breach of Jewel's current contract,³ a contractor's rights under an existing contract is a matter of contract administration which we will not review. See 4 C.F.R. § 21.3(m)(1); Embassy Air Express, B-239920.2, Dec. 20, 1990, 90-2 CPD ¶ 508. Jewel's contention that it

²For example, we will consider protests regarding subcontracts awarded by prime contractors operating and managing Department of Energy facilities; purchases of equipment for government-owned, contractor-operated plants; and procurements by construction management prime contractors. Ocean Enters., Ltd., 65 Comp. Gen. 585 (1986), 86-1 CPD ¶ 479, aff'd, 65 Comp. Gen. 683 (1986), 86-2 CPD ¶ 10.

³The Army awarded a contract to Jewel under the Small Business Administration's 8(a) program which extends through September 30, 1994. According to the agency, that contract in part is to "furnish all labor, material, and equipment and to perform all work incidental to the maintenance and repair of elevators" at the Bayne-Jones Army Community Hospital. The agency does not dispute that the statement of work in Jewel's current contract describes the same elevators covered by Montgomery's subcontract.

is being deprived of business to which it has a contractual right should be brought before the appropriate administrative forum or court of competent jurisdiction.

The protest is dismissed.

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