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Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: General Motors Corporation, Allison
Transmission Division

File: B-260883

Date: April 18, 1995

DECISION

General Motors Corporation, Allison Transmission Division (GM), protests the proposed award of a subcontract by the United Defense Limited Partnership (UDLP) to Martin Marietta Defense Systems (MMDS) under contract No. DAAE30-95-C-0009 (No. C-0009). UDLP is the prime contractor under contract No. DAAA21-94-C-0084 (No. C-0084), awarded by the Department of the Army for delivery of functional prototype vehicles comprising the "Crusader System," (formerly the Advanced Field Artillery System (AFAS)/Future Army Resupply Vehicle (FARV)). UDLP has proposed that a subcontract be awarded to MMDS to supply the transmission component of the system. GM alleges that the evaluation of subcontractor proposals for the system's transmission component was flawed and that meaningful discussions were not conducted.

We dismiss the protest because our Office generally does not review the selection of subcontractors.

The record shows that under the prime contract, UDLP, known as the "systems contractor," is responsible for the overall development of the Crusader System. Under its prime contract, UDLP was required, among other things, to select a propulsion system (engine and transmission) using a best value approach, with the selection results presented to the Army for review to ensure that the selection process was reasonable.

By letter dated September 15, 1994, the Army's contracting officer outlined for UDLP the extent of the government's involvement during the initial contract definition and subsequent development phases of UDLP's prime contract. The contracting officer explained that in response to requests from UDLP, the government would provide clarification of the AFAS/FARV requirements, but that the government "[would] neither recommend nor direct approaches to meeting technical requirements." The contracting officer emphasized that the government "[would] not participate as a member of contractor selection or decision panels," and that during the development phases, the government "[would] monitor

[UDLP's] progress and assure that it coincides with the [master plan and schedule]." Finally, the contracting officer reiterated that as the systems contractor, UDLP had "full responsibility for the selection of the technical approach taken for the [development phases]."

On October 10, UDLP issued a request for proposals (RFP) to subcontract the transmission component of the system. Section M of the RFP stated in relevant part that:

"[UDLP] will select the responsible Offeror whose proposal, conforming to this solicitation, presents the best value to the Government. The basis for award will be an assessment by the Source Selection Authority [of technical merit, cost, and management--the evaluation factors listed in descending order of importance]. Ultimately, the source selection decision will take into account the Offeror's capability to meet the requirements of this solicitation on a timely and cost effective basis. [UDLP] reserves the right to flexibility in evaluation as necessary to assure a best value selection."

By letter dated December 9, the Army's contracting officer advised UDLP that the government's role during the propulsion system evaluations, including those for the transmission subcontract, would be limited to ensuring that requirements were clearly understood, and to providing requested information. The contracting officer stated that "[g]overnment [personnel] are restricted from serving on selection and or decision panels All scoring and or subject evaluations are to be performed by UDLP or its designated agents other than [g]overnment [personnel]." Furthermore, the contracting officer pointed out that the role of the government would be "limited to a review of [UDLP's] process to assure a fair and impartial selection is made."

UDLP evaluated subcontractor proposals and determined that MMDS' proposal represented the best value. UDLP subsequently met with the Army to discuss its selection process for the system's transmission component and to receive the Army's formal consent to the proposed subcontract award to MMDS.

On December 29, the Army issued the letter contract, No. C-0009, to UDLP to begin performing various system development tasks; these tasks were unrelated to the transmission subcontract selection process. While the formal subcontract selection process occurred under UDLP's

prime contract, No. C-0084, UDLP's proposed subcontract award to MMDS would occur under No. C-0009. On January 27, UDLP publicly announced its intention to award the transmission subcontract to MMDS.

Our Office does not review subcontract awards by government prime contractors except where the award is by or for the government. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(10) (1995). This limitation on our review is derived from the Competition in Contracting 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. Hydro-Pure Sys. Co., B-255252, Jan. 31, 1994, 94-1 CPD ¶ 64; Edison Chouest Offshore, Inc.; Polar Marine Partners, B-230121.2; B-230121.3, May 19, 1988, 88-1 CPD ¶ 477.

For 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. In each of these situations, the prime contractor principally provides large-scale management services to the government and, as a result, generally has an ongoing purchasing responsibility. Id.

Here, UDLP's proposed subcontract award to MMDS for the system's transmission component does not meet this standard. Rather, the record shows that under its prime contract, UDLP was responsible for the solicitation and evaluation of the subcontract proposals for system components, including the transmission, and for the award of the subcontracts. The subcontracts awarded by UDLP for system components will enable UDLP to satisfy the requirements of its prime contract, under which it is ultimately responsible for delivery of functional prototype vehicles to the government. The government's role in UDLP's subcontractor selection process, as evidenced by the above-quoted language in letters from the Army's contracting officer to UDLP, basically was limited to responding to questions concerning the government's requirements; to performing oversight of

UDLP's performance as the prime contractor, including whether UDLP reasonably selected system subcontractors; and to formally consenting to UDLP's proposed subcontract awards.

Under these circumstances, we conclude that UDLP's proposed award of a subcontract to MMDS for the system's transmission component was not "by or for the government." Therefore, GM's protest concerning the award of this subcontract is outside our jurisdiction.

The protest is dismissed.¹



John Van Schaik
Acting Assistant General Counsel

¹We note that GM's response to the requests for summary dismissal filed by the Army and UDLP was fully considered in resolving this jurisdictional matter.