

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-215570.2 **DATE:** August 13, 1984
MATTER OF: Delta Electric Company, Inc.

DIGEST:

Complaint is dismissed where there is no indication that the potential prime contractor has acquiesced in the complaint of its potential subcontractor against the proposed award of the prime contract to another bidder.

Delta Electric Company, Inc. (Delta), has filed a complaint against proposed award of a contract to Cooley Corporation of Williston, Vermont (Cooley). Delta is a potential subcontractor to Cooley Asphalt Paving Corporation (Cooley Asphalt), which submitted a bid as a prime contractor. The award is to be funded by a grant from the Federal Aviation Administration (FAA) to Burlington International Airport.

Delta contends that irregularities occurred in the bid submitted by Cooley and that Cooley's subcontractor, Cassani Electric Service, did not make an adequate site inspection before submitting its quotation to Cooley. Therefore, Delta requests that Cooley be disqualified as a bidder and that an award be made to Cooley Asphalt.

In our public notice entitled "Review of Complaints Concerning Contracts Under Federal Grants," 40 Fed. Reg. 42406, September 12, 1975, GAO stated that "we will undertake reviews concerning the propriety of contract awards made by grantees . . . upon request of prospective contractors." (Emphasis supplied.) In Hydro-Clear Corporation, B-189486, Feb. 7, 1978, 78-1 C.P.D. ¶ 103, we stated:

"By that language, we intended to limit the parties that can initiate our review to those with direct and recognizable interests, i.e., generally bidders under the grantee's solicitation. . . .

"Under the present circumstances, we believe that the legitimate recognizable interests in the

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prime contract award . . . are adequately protected by limiting the class of parties eligible to request our review to firms that submitted bids and are, therefore, 'prospective contractors.' . . ."

We have also recognized the right of a proposed subcontractor to protest a prime contract award where the protester is listed as a proposed subcontractor and the potential prime contractor acquiesces in the subcontractor's protest. Educational Projects, Inc., 56 Comp. Gen. 381 (1977), 77-1 C.P.D. ¶ 151. The complainant's proposed prime contractor has also submitted a complaint which effectively raises one of the issues argued by the complainant. Nevertheless, Cooley Asphalt filed its complaint 3 weeks before Delta filed its complaint, and there is no indication that Cooley Asphalt has acquiesced in Delta's complaint.

In these circumstances, we believe that the class of parties eligible to request review of the award should be limited to firms that submitted bids in response to the grantee's solicitation. Accordingly, Delta's complaint is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel