



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Peter Bauwens Bauunternehmung GmbH & Co. KG

**File:** B-277734; B-277982; B-277986

**Date:** October 8, 1997

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J. Casey Fos, Esq., Parker, Poe, Adams & Bernstein, for the protester.  
John Lariccia, Esq., Department of the Air Force, for the agency.  
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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## DIGEST

General Accounting Office (GAO) lacks jurisdiction to review protests of contract awards made by German government pursuant to international agreement, since GAO's jurisdiction is limited to federal agency procurement actions; protester's argument that GAO has "by or for" jurisdiction over the awards is without merit because: (1) "by or for" jurisdiction, which ordinarily arises in the context of a subcontract award by a federal prime contractor, does not apply to procurement conducted by sovereign foreign government pursuant to international agreement; (2) in any case, GAO no longer views its jurisdiction as routinely extending to procurements conducted by others but "for" the government; and (3) even if "by" jurisdiction applied to foreign government procurements, United States agency's involvement in procurements was not so extensive that German contracting authority could be viewed as a mere conduit for agency.

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## DECISION

Peter Bauwens Bauunternehmung GmbH & Co. KG protests its failure to receive awards under Department of the Air Force request for proposals (RFP) Nos. F61521-93-C-5218, F61521-95-C-5236, and F61521-95-C-5262, for building renovations at U.S. Armed Forces facilities in Mannheim, Germany.

We dismiss the protests.

These procurements were conducted by an agency of the Government of Germany, the German Government Construction Agency (GGCA), using United States appropriated funds, pursuant to an international agreement between the United States and Germany.<sup>1</sup> Under the agreement, the GGCA is responsible for soliciting

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<sup>1</sup>The international agreement is entitled the Administrative Agreement, AGB 1975, between the Federal Minister for Regional Planning, Building and Urban

(continued...)

offers, making awards, and administering the contracts "in accordance with German law and administrative regulations in force for [German] federal building."

The Air Force argues that our Office lacks jurisdiction over the awards because they were made by a foreign government. Under the Competition in Contracting Act of 1984 (CICA), our Office has jurisdiction to resolve bid protests concerning solicitations and contract awards that are issued "by a Federal agency." 31 U.S.C. § 3551(1)(A) (1994). As a result, we generally will not review protests of foreign country procurements, even where financed by U.S. appropriated funds. See Bucyrus-Erie Co., B-197151, Jan. 10, 1980, 80-1 CPD ¶ 32.

Bauwens argues that our Office does in fact have jurisdiction because the German government is conducting the procurements "by or for" the Air Force, and we have taken jurisdiction over such protests in the past.

This argument is without merit. Pursuant to our authority under CICA, we initially took jurisdiction over subcontract awards by prime contractors to the federal government where, as a result of the government's involvement in the award process, or the contractual relationship between the prime contractor and the government, the subcontract in effect was awarded on behalf of--i.e., "by or for"--the government, and federal procurement laws and regulations otherwise would apply. See Compugen, Ltd., B-261769, Sept. 5, 1995, 95-2 CPD ¶ 103 at 3-4. It is this jurisdiction that Bauwens attempts to invoke. The attempt fails. First, we have never extended "by or for" jurisdiction to the circumstances here, that is, where a sovereign foreign government is conducting procurements pursuant to authority granted it by international agreement. In these circumstances, there is no bypassing of federal procurement requirements such that consideration of whether the procurements are "by or for" the government is warranted; rather, the procurements are being conducted by the German authority as contemplated by the international agreement.

Second, and in any case, consistent with the holding in U.S. West Communications Servs., Inc. v. United States, 940 F.2d 622 (Fed. Cir. 1991), it now is our view that our jurisdiction generally does not extend to awards made by others but "for" the government; we therefore no longer review protests of such subcontract awards where, as here, the agency involved has not requested in writing that we do so. See 4 C.F.R. § 21.5(h), 21.13(a) (1997); see also Compugen, Ltd., *supra*, at 4-5. Further, while we still will consider protests concerning awards essentially "by" the

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<sup>1</sup>(...continued)

Development of the Federal Republic of Germany and the United States Forces on the Implementation of Construction Works of and for all U.S. Forces stationed in the Federal Republic of Germany, in accordance with Article 49 of the Supplementary Agreement to the NATO Status of Forces Agreement.

government--that is, where the government's involvement in the procurement is so extensive that a prime contractor in effect is acting as a mere conduit for the agency--the involvement here by the government was not so substantial that the procurements could be considered to be "by" the government (even if we were to equate the German contracting authority with a federal prime contractor and apply our "by" jurisdiction by analogy). See Compugen, Ltd., supra, at 5-6. In this regard, the procurements are governed by German laws and regulations, and GGCA is fully responsible for conducting the procurement and making the award. As noted by Bauwens, the international agreement does provide for possible involvement in the procurement by the United States as the country for which the construction work is being solicited--the United States may reject any offer (consistent with German law), and has the right to approve award under specified circumstances. While pursuant to these provisions the government could influence the award decision in some circumstances, this possibility by itself would not be sufficient to establish that the GGCA was acting as a mere conduit for the Air Force. See id.

The protests are dismissed.

Comptroller General  
of the United States