

DECISION

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

6 1058

FILE: B-186678

DATE: June 30, 1976

MATTER OF: Dempster Dumpster Systems

98367

DIGEST:

1. Protest raising matters of contract administration is not appropriate for consideration by the GAO.
2. While GAO will consider protests involving subcontracts under rules stated in Optimum Systems, Inc., 54 Comp. Gen. 767, 75-1 CPD 166 (1975), absent claim of fraud or bad faith by agency protest would not be for consideration where only alleged Government involvement in subcontractor selection is approval of shop drawings submitted by prime contractor, implying determination of fact by agency that offered product is brand-name or equal.

Dempster Dumpster Systems (Dempster) protests a determination by the Corps of Engineers (Corps), to accept a trash compactor proposed to be furnished by the Savoy Construction Company as prime contractor for the construction of a new Harry Diamond Laboratories facility at Adelphi, Maryland, under prime contract DACA31-74-C-0003. Dempster alleges: (1) that the prime contract establishes its Powermite Model SP 5-20 as the standard under a brand-name or equal specification; (2) that the Corps is required to approve any product offered as "equal"; (3) that the trash compactor to be furnished by Savoy is not equal; and (4) that the Corps is in error in determining that it is. Dempster does not object to the specifications regarding designation of the Powermite Model SP 5-20.

Insofar as this protest concerns Savoy's compliance (or lack of compliance) with the contract requirements, the protest involves matters of contract administration which are not appropriate for consideration by our Office. Abbott Power Corp., B-186146, May 11, 1976, 76-1 CPD ____; Associated Electronics, Inc., B-184085, November 3, 1975, 75-2 CPD 272.

While this Office will consider protests involving subcontracts, we will do so only in limited circumstances, as set out in our decision

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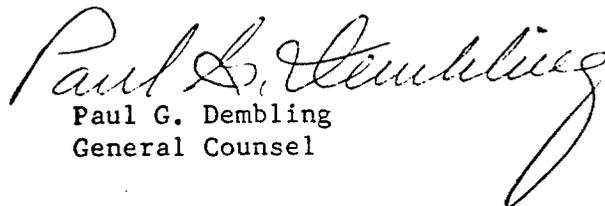
in Optimum Systems, Inc., 54 Comp. Gen. 767, 75-1 CPD 166 (1975).
There we stated that

"* * * where the only Government involvement in the subcontractor selection process is its approval of the subcontract award or proposed award (to be contrasted with the circumstances set out * * * where direct or active Government participation in or limitation of subcontractor selection existed), we will only review the agency's approval action if fraud or bad faith is shown. * * *"

We are advised that a subcontract is involved, and that the Government's only involvement in subcontractor selection is that it has approved shop drawings submitted by Savoy, showing use of the alternative equipment. Any review by this Office of this action invites us to become involved in contract administration. See Abbott Power Company, supra.

Finally, Dempster does not allege that the Corps' findings were motivated by fraud or bad faith.

In view of the foregoing, Dempster's protest will not be considered on the merits.


Paul G. Dembling
General Counsel