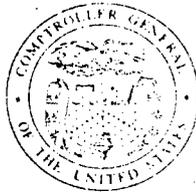


DECISION



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

61347  
98678

FILE: B-180617

DATE: August 17, 1976

MATTER OF: Metropolitan Transit Commission of San Francisco,  
California

DIGEST:

Protest requesting review of prime contractor's selection of subcontractor is dismissed as not being case appropriate for consideration on merits.

Urban Systems Research & Engineering, Inc. (USR&E) has filed a protest concerning a proposed subcontract award by the Metropolitan Transportation Commission (MTC) which has a cost reimbursement prime contract with the Department of Transportation (DOT).

The essence of the protest is that improprieties and irregularities occurred in the negotiation procedures followed by MTC in soliciting for a study of the impact of the Bay Area Rapid Transit system on land use and urban development. With certain exceptions, our Office generally does not consider protests involving an award of a subcontract by a prime contractor of the Government. The protester and DOT have each submitted statements as to whether this is the type of subcontract protest which should be considered by this Office in view of our decision in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

MTC proposed to contract with a firm other than the protester; however, DOT refused to approve the award and suggested that MTC either cancel the solicitation and issue a new one or specifically advise the present offerors of the deficiencies in their proposals, conduct additional oral or written discussions and allow each offeror to submit a best and final offer. MTC has advised DOT that it will conduct additional negotiations with the firms within the competitive range, including the protester. However, the protester has requested that this protest action be left open pending negotiation and contractor selection because of prior questionable action by the prime contractor. On the other hand, DOT requests that this matter be dismissed because it involves the award of a subcontract by a Government prime contractor.

On the record before us, it is clear that no privity will exist between DOT and any MTC subcontractor and that MTC cannot legally bind the Government in any subcontracts it might award

under the prime contract. It is also clear that MTC is not acting as a purchasing agent for the Government. There is no indication that the proposed subcontract will be made "for" the Government within the meaning of our decision in Optimum Systems, Inc., supra. See Probe Systems, Inc., B-182236, April 25, 1975, 75-1 CPD 260. Further, the protester has not shown any bad faith or fraud on the part of the Government agency which is a prerequisite to GAO review when the Government's involvement is limited to approval of a proposed subcontract. Tucker Tool & Die, Inc., B-183999, September 2, 1975, 75-2 CPD 134. While DOT disapproved the proposed award to another firm, such action does not appear to be prejudicial to the position of this protester.

Based on these reasons we agree with DOT that this protest is not an appropriate one for consideration on the merits. As noted above, however, the agency has undertaken to insure MTC's compliance with the procedural requirements.

Accordingly, the protest is dismissed.

  
Paul G. Dembling  
General Counsel