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DECISION



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

George Ruppert
Proc. I

FILE: B-188037

DATE: January 17, 1977

MATTER OF: Lyco-ZF

DIGEST:

1. While GAO will consider protests involving subcontracts under limited circumstances stated in Optimum Systems, Inc., protest will not be considered where selection of subcontractor was choice of prime contractor and Government's approval was directed not to selection of subcontractor, but to its compliance with specifications and review of action would result in GAO involvement in contract administration.
2. Protest by subcontractor against alleged restrictive specifications is untimely under section 20.2(b)(1) of Bid Protest Procedures because protest of improprieties apparent prior to bid opening was not filed prior to bid opening.

Lyco-ZF protests the award of a subcontract to Met-Pro Systems under Department of the Army contract DABT35-76-C-0342 awarded to Campanella Construction Co., Inc., for three wastewater treatment plants.

By letter dated December 13, 1976, with enclosures, counsel for Lyco protested the alleged determination of the contracting officer to disqualify Lyco as a supplier of materials to the prime contractor. Counsel contends that the contracting officer disqualified Lyco for failure to meet the 5-year experience requirement in the specifications.

Our Office will consider subcontract protests only in limited circumstances as set forth in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1/CPD 166. The circumstances are: (1) where the prime contractor is acting as the purchasing agent of the Government; (2) where the active or direct participation of the Government in the selection of a subcontractor has the net effect of causing or controlling the rejection or action of potential subcontractors, or of

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significantly limiting subcontractor sources; (3) where fraud or bad faith in the approval of the subcontract award by the Government is shown; (4) where the subcontract award is "for" the Government; or (5) where a Federal agency entitled to the same requests an advance decision. In Optimum Systems, it was stated further:

"However, 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 above 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. * * *"
Id. at 774.

In this case, the selection of the subcontractor was the choice of the prime contractor. Only after the award was made to Campanella was that firm required to submit the list of equipment the subcontractor proposed to use in the projects so the contracting officer could determine whether it would meet all the terms and conditions set forth in the specifications. The specifications included the requirement that "The manufacturer of the IPC plant shall have at least 5 years' experience in the design and manufacture of physical - chemical wastewater treatment equipment incorporating chemical addition, clarification, filtration and granular carbon contacting methods." The contracting officer determined that Lyco did not meet the 5-year experience factor cited.

Based upon the above circumstances, the Government's approval was directed not to the selection of the subcontractor, but to the determination that the firm have at least 5 years' experience in the design and manufacture of the equipment. Since neither fraud nor bad faith has been alleged or demonstrated in connection with the Government's determination concerning Lyco's compliance with the specifications and review of this action would result in our becoming involved in contract administration, this is not the type of subcontract protest where we will assume jurisdiction. Flair Manufacturing Corp., B-187870, December 14, 1976.

Lyco's protest concerning the alleged restrictiveness of the specifications is clearly untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1976), because the protest of improprieties apparent prior to bid opening was not filed in our Office prior to

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the opening of bids for the prime contract. See Midwest Tele
Communications Corporation, B-184323, February 9, 1976, 76-1 CPD 81.

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

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