PL-11

DECISION

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

10,985

FILE: B-194275 **DATE:** August 8, 1979

MATTER OF: MRCA, Inc. DLG02545

[Protest of GSA Contract Award for Installation of Automatic Lighting System]

DIGEST:

1. GAO will not consider protest allegation that subcontract awarded by prime contractor infringes upon protester's patent rights with consent and authorization of Government, as 28 U.S.C. § 1498(a) (1976) provides that protester's exclusive remedy is suit against Government in Court of Claims.

2. GAO also will not consider the allegation that lighting system being installed by the prime contractor does not comply with the contract specifications since that is a matter of contract administration which is the function and responsibility of contracting agency.

3. ~~GAO will not~~ conduct investigation ~~pursuant to bid protest procedures~~ to determine whether the protester has been "wronged" and should institute a court action. Finally GAO cannot ~~In addition,~~ [1]

4. If protester believes agency's regional office improperly withheld documents in response to FOIA request, protester must appeal within agency or to Federal district court, not to GAO.

AGC00017 MRCA, Inc. (MRCA) protests the award of a contract by the General Services Administration (GSA) to S. Puma Corporation (Puma) for the installation of an energy DLG02546 saving automatic lighting system in two warehouses at the Raritan Depot in Edison, New Jersey, and Puma's selection of Harbig Construction Company (Harbig) as DLG02547 a subcontractor to install certain equipment. The solicitation described the lighting control portion of the system in terms of the performance required, but

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also stated that the function of certain components thereof should be that of MRCA products, described by model number, or approved equal. In this regard, the solicitation provided that the identification of MRCA products was "to indicate the type of function required and does not restrict the Contractor from offering an alternate system which provides similar functions." MRCA's equipment was not used in the project. MRCA believes that it should have been selected as the subcontractor because it has a patent and a patent pending for the type of lighting system the contract calls for and performance by any other firm infringes upon its patent rights.

On May 9, 1978, GSA issued the invitation for bids (IFB) for the installation of the lighting system. Bids were opened on June 1, 1978, and Harbig was the apparent low bidder, while Puma was the second low bidder. MRCA did not submit a bid. However, on June 15, 1978, Puma was awarded the contract after Harbig's bid was rejected as nonresponsive because it was not accompanied by a bid bond as required by the IFB. Harbig ultimately became Puma's subcontractor.

During the first week of September 1978, MRCA discovered that Puma was not going to subcontract with it for the lighting system equipment. By a letter dated September 8, 1978, MRCA protested to GSA that Puma's subcontractor, Harbig, was acquiring lighting system equipment for the project from another manufacturer in violation of MRCA's patent rights. MRCA requested a broad range of information regarding the award of the contract to Puma and the manner in which it was being performed.

On February 8, 1979, GSA officials met with MRCA officials to discuss its protest although MRCA had still not received all of the information that it requested. At that meeting MRCA learned that Honeywell was the manufacturer of the equipment being installed by Harbig for Puma and after consulting with Honeywell MRCA filed a protest with our Office.

MRCA requests that we determine if GSA properly awarded the contract to Puma and whether GSA acted properly in approving both Puma's use of Harbig as a subcontractor and Harbig's use of equipment manufactured by Honeywell. MRCA maintains that it has a patent and a patent pending on the equipment and that installation of any equipment other than its own infringes upon its patent rights. MRCA also believes that GSA's regional office improperly withheld certain information from it in response to its request for documents under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1976). The protester asks that we compel GSA to submit all documents relating to the contract to us so that we can investigate the entire project to determine whether it has been "wronged" and should file suit in the Court of Claims. MRCA additionally questions whether the lighting control equipment and installation methods meet the contract specifications.

We must decline to consider MRCA's protest regarding Puma's failure to select it as a subcontractor and GSA's approval of Harbig and Harbig's use of Honeywell's equipment. MRCA's protest is essentially that installation of a lighting system manufactured by a firm other than MRCA infringes upon its patent rights. However, 28 U.S.C. § 1498(a) (1976) provides that the exclusive remedy for a patent holder who claims patent infringement by the Government or by a Government contractor or subcontractor who acts with the authorization or consent of the Government is a suit against the Government in the Court of Claims. Therefore, this matter is not for consideration by our Office. Controlled Environment Systems, Inc., B-191851, August 15, 1978, 78-2 CPD 119.

As for whether the materials and installation meet the contract specifications, MRCA's allegations involve contract administration which is the function and responsibility of the contracting agency. We do not review allegations of this nature under our bid protest procedures, which are reserved for considering whether an award, or proposed award, of a contract complies with statutory, regulatory, and other legal requirements, Albert S. Freedman d/b/a Reliable Security Services, B-194016, February 16, 1979, 79-1 CPD 122.

Finally, we cannot comply with MRCA's request to investigate whether it has been "wronged" by GSA. It is not our function to conduct investigations pursuant to our Bid Protest Procedures in order to establish whether a protester has been "wronged" and whether it should institute a court action. See Bowman Enterprises, Inc., B-194015, February 16, 1979, 79-1 CPD 121. As for the protester's belief that GSA's regional office improperly withheld information, the protester's sole relief under the FOIA is to appeal within the agency itself or to take the matter to a Federal district court of competent jurisdiction. 5 U.S.C. § 552(a) (4)(B) (1976); McNamara-Lunz Vans and Warehouses, Inc.-Reconsideration, B-188100, August 26, 1977, 77-2 CPD 149.

The protest is dismissed.

Milton J. Socolar
General Counsel