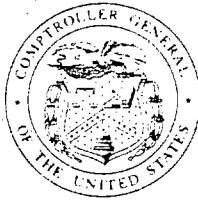


13997 Proc II
Cohen

DECISION



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

FILE:

B-198642

DATE: June 11, 1980

MATTER OF: Braswell Shipyards, Inc. CNG 00195

[Protest of Rejection as Subcontractor by Prime Contractor]

DIGEST:

Protest by potential subcontractor against its rejection by prime contractor is dismissed, since protest does not meet any circumstance under which GAO considers subcontract protests.

Braswell Shipyards, Inc. (Braswell) protests its rejection as a subcontractor by VSE Corporation, a prime contractor with the Department of the Army for the modernization and overhaul of Army watercraft. The protester asserts that the rejection was based on the Army's finding that Braswell, a small business, was not a responsible concern, and argues that the rejection therefore was improper without first referring the matter of Braswell's responsibility to the Small Business Administration to determine whether a Certificate of Competency should be issued. 479 20

The protest is dismissed.

In Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166, we held that our Office would consider protests concerning the award of subcontracts only in certain circumstances, one of which is where the Federal Government so directly or actively participated in the subcontractor selection that the net effect was to cause the rejection or selection of a potential subcontractor.

Braswell states that under the terms of VSE Corporation's contract with the Army, the prime contractor was required to obtain the Army's approval of a potential subcontractor. Braswell asserts that VSE Corporation proposed Braswell as a subcontractor, but withdrew Braswell's name and proposed another

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firm after the Army initiated an investigation into Braswell's financial responsibility. The protester suggests that the Army "evidently * * * urged the prime to reject Braswell and seek * * * [Army] approval of another sub." On that basis, Braswell contends that the above-stated circumstance in which we consider subcontractor protests is applicable. In support of its position, Braswell cites our decision in 49 Comp. Gen. 668 (1970) which the firm argues involved "virtually the same facts" as those here, and which is discussed in Optimum Systems, Inc., supra, as an example of the Government's direct participation in a subcontractor's rejection to invoke our review.

We have been informally advised by both the Army and VSE Corporation that the latter eliminated Braswell as a proposed subcontractor before the Army reported any results of its investigation of Braswell's finances, and that this action was in no way "urged" by the Army, as suggested by the protester. Rather, we are advised that the decision not to subcontract with Braswell was an independent one by the prime contractor based on VSE Corporation's doubt as to Braswell's capability to fulfill the subcontract requirement. In contrast, in the decision cited by Braswell a proposed subcontractor was rejected based on the Government's negative preaward survey performed at the prime contractor's request.

Accordingly, it appears that the Army did not directly or indirectly cause Braswell's rejection as a subcontractor.

The protest is dismissed.

Harry R. Van Cleave
for Milton J. Socolar
General Counsel