

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

14572

[Protest of Navy Contract Award]

FILE: B-198793

DATE: August 7, 1980

MATTER OF: Chavez Painting

DLG05045

DIGEST:

1. Although GAO will consider protests involving subcontracts under limited circumstances stated in Optimum Systems, Inc., protest will not be considered where subcontractor selection is choice of prime contractor and Government does not participate in selection.
2. Protest concerning small business size status of prime contractor is not subject to review by GAO, since by law it is matter for decision by Small Business Administration.
3. Protest that prime contractor did not submit subcontracting plan is without merit, since statute and regulation except small business bidders and offerors from requirement.

Chavez Painting (Chavez) protests the award of a subcontract to Ballman Painting Co. by Trepte Construction Company (Trepte), a small business concern and the prime contractor under invitation for bids No. N62474-78-C-0854 issued by the Department of the Navy (Navy). Chavez contends that (1) Trepte's subcontract award should be reviewed by this Office; (2) Trepte must prove that it is a small business; and (3) Trepte did not submit a subcontracting plan as required by Public Law 95-507, October 24, 1978.

Generally, we do not review protests concerning the award of subcontracts by Government prime contractors, unless they come within certain clearly delineated

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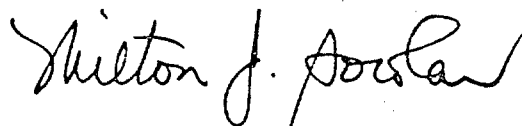
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circumstances. These include, among others, situations where the Government so actively participates in the subcontractor selection process as to effectively cause or control selection. Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

In this case, the prime contract did not require Government approval of the subcontract, the choice of a subcontractor was within the sole discretion of the prime contractor, and the procuring activity did not participate in any decision concerning an award of the subcontract. Therefore, the protest against award of the subcontract is dismissed. Braswell Shipyards, Inc., B-198642, June 11, 1980, 80-1 CPD 410.

Chavez's contention that Trepte must prove that it is a small business with average annual receipts under \$12 million dollars for the last 3 years is a challenge of Chavez's small business size, a matter not for review by our Office. Under 15 U.S.C. § 637(b) (1976), the Small Business Administration is empowered to conclusively determine matters of small business size status for Federal procurement and sales purposes. See Versatile Services, Inc., B-195894, September 24, 1979, 79-2 CPD 219; Alaska Associates, Inc., B-196360, February 20, 1980, 80-1 CPD 149. Therefore, this aspect of the protest is dismissed also.

Chavez's contention that Trepte did not submit a subcontracting plan as required by Public Law 95-507 is without merit and is accordingly denied. Both Public Law 95-507, chapter 2, § 211(7) and Defense Acquisition Regulation § 7-104.14(c)(d)(2) (1976 ed.) provide that subcontracting plan requirements do not apply to offerors or bidders which are small business concerns. Rocky's Trailer Manufacturing, Inc., B-199062, July 16, 1980, 80-2 CPD _____. Since Trepte certified it was a small business, a subcontracting plan was not required to be furnished.



For the Comptroller General
of the United States