

DECISION

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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548
1183K

FILE: B-207244

DATE: May 5, 1982

MATTER OF: Westaire Mechanical

DIGEST:

Statutes and regulations governing direct Federal procurement do not apply to the contracting practices and procedures of prime contractors. GAO therefore considers protests by subcontractors only in very limited circumstances, including where the prime contractor is acting for the Government; the Government actively participated in subcontractor selection or rejection; there is evidence of fraud or bad faith in the Government's approval of the subcontractor; or a Federal official requests an advance decision.

This is a protest against award of a subcontract by Joel Li Construction, a National Aeronautics and Space Administration contractor. We dismiss the protest.

Westaire Mechanical states that in connection with a solicitation issued in September 1981 by the Ames Research Center, Moffet Field, California, it quoted prices for air conditioning and sheet metal work which Joel Li used in preparing a successful bid for the prime contract. Thereafter, the protester states, Joel Li listed Westaire Mechanical in a trade publication as the successful subcontractor and otherwise dealt with the firm in a manner which indicated that a contractual relationship existed. However, beginning in January 1982, Joel Li advised that for business reasons it wished to substitute another firm as subcontractor on the Ames Research Center job. Westaire Mechanical states that it believes that Mauck Sheet Metal is now being employed as Joel Li's subcontractor.

In the request for a decision by our Office, Westaire Mechanical alleges violation of the California Fair Practices Act, fraud on the part of Joel Li, breach of contract, tortious interference with a contractual relationship, and violations of Federal bid procedures.

As a general rule, the statutes and regulations governing direct Federal procurement do not apply to the contracting practices and procedures of prime contractors, who normally are acting as independent agents. Our Office therefore considers protests by subcontractors only in limited circumstances. Center for Employment Training, B-203555, March 17, 1982, 82-1 CPD 252.

These circumstances are set forth in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. They include (1) where the prime contractor is acting as the Government's purchasing agent; (2) where the Government's direct participation in the procurement has the effect of either selecting or rejecting a particular subcontractor; (3) where there is a showing of fraud or bad faith in the Government's approval of the subcontractor; (4) where the subcontract is "for" an agency of the Government; or (5) where federal officials who are entitled to advance decisions by our Office submit questions concerning the award of subcontracts. See also Wood Ivy Systems Corporation, B-203487, June 15, 1981, 81-1 CPD 491.

None of these circumstances is present here. The remainder of Westaire Mechanical's allegations may be susceptible to proof in a court of competent jurisdiction, but they are not for consideration under our Bid Protest Procedures which are concerned with the award of contracts by or for agencies of the Federal Government whose accounts are subject to settlement by our Office. 4 C.F.R. § 21.1(a)(1981). We therefore will not consider the protest.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel