

# DECISION



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

31631

**FILE:** B-219108.2

**DATE:** July 8, 1985

**MATTER OF:** Rohde & Schwarz-Polarad, Inc.--  
Reconsideration

## DIGEST:

Subcontractor selection is not made by or for the government within the meaning of the exception allowing GAO review because prime contractor is not acting as an operator of government-owned facilities or a construction management prime contractor and is not otherwise serving as a mere conduit between the government and the subcontractor.

Rohde & Schwarz-Polarad, Inc., requests that we reconsider our dismissal of its original protest, B-219108.1, filed with our Office on June 11, 1985. We dismissed the protest by letter dated June 11, because it concerned selection of a subcontractor, an issue which our Office does not review unless the selection is made by or for the government. We affirm our prior dismissal.

The protest by Rohde & Schwarz-Polarad concerns award of a subcontract for 225 very high frequency (VHF) direction-finders (for use at municipal airports) under request for proposals (RFP) No. DTFA01-85-01003, issued by Systems and Applied Science Corporation (SASC). The direction-finders will be used by SASC in performing its prime contract with the Federal Aviation Administration (FAA) to provide VHF direction-finder systems. Two offerors, the protester and O.A.R. Corporation, submitted proposals to SASC under the RFP. On May 28, SASC awarded the subcontract to O.A.R.

Section 21.3(f)(10) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(10) (1985), provides that we will not consider subcontractor protests except where the subcontract is by or for the government. This limitation on our

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review is derived from the Competition in Contracting Act of 1984, Pub. L. No. 98-369, title VII, 98 Stat. 1175 (1984), 31 U.S.C. §§ 3551-3556, which limits our bid protest jurisdiction to protests concerning solicitations issued by federal contracting agencies. In the context of subcontractor selections, we interpret the Act to authorize our Office to review protests only where, as a result of the contractual relationship between the prime contractor and the government, the subcontract in effect is awarded on behalf of the government. For example, we will consider protests regarding subcontractor selections where they concern subcontracts awarded by prime contractors operating and managing Department of Energy facilities; purchases of equipment for government-owned, contractor-operated plants; and procurements by construction management prime contractors. See Information Consultants, Inc., B-213682, Apr. 2, 1984, 84-1 CPD ¶ 373. In each of those cases, the prime contractor principally provides large-scale management services to the government and, as a result, generally has an ongoing purchasing responsibility; in effect, the prime contractor acts as a middleman between the government and the subcontractor.


Here, in contrast, the prime contractor is not acting as a mere conduit between FAA and the subcontractor. SASC's contract with FAA is for VHF direction-finder systems, of which the equipment acquired under the subcontract at issue is a major component. Regardless of whether SASC itself produces the various components or simply integrates them into the required system, SASC is responsible under its contract with FAA for developing the end-product systems. Further, the fact that the prime contract is a cost-reimbursement-type contract is not sufficient, standing alone, to justify our review of the subcontractor selection. Optimum Systems, Inc., 54 Comp. Gen. 767, 772 (1975), 75-1 CPD ¶ 166. As a result, we find that the subcontract at issue was not made by or for the government within the meaning of our Regulations, 4 C.F.R. § 21.3(f) (10).

The protester also argues that we should consider its protest based on its contention that FAA's participation in several phases of the subcontractor selection process

effectively resulted in the rejection of the protester's proposal. Before enactment of the Competition in Contracting Act, we reviewed those limited cases where the government so actively or directly participated in the selection of the subcontractor that the net effect was to cause or control the prime contractor's selection or rejection of a particular firm. See Optimum Systems, Inc., supra, 54 Comp. Gen. at 773. We do not believe, however, that such cases involve solicitations issued by federal contracting agencies within the meaning of the Act's definition of our bid protest jurisdiction. As in this case, the fact that the government allegedly controlled the subcontractor selection does not indicate that the prime contractor is acting as the government's agent in the procurement, in our view the only circumstance under which the Competition in Contracting Act authorizes review by our Office.

In any event, there is no suggestion in the record here that FAA's actions controlled, or in fact in any way influenced, SASC's selection of the awardee and rejection of the protester. The FAA's actions as described by the protester appear to have been directed to providing technical support to SASC to assist it in evaluating the equipment offered. In our view, the fact that FAA provided technical assistance to SASC does not establish that FAA actively and directly participated in the selection of the subcontractor.

The prior dismissal is affirmed.

  
Harry R. Van Cleave  
General Counsel