

DECISION

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

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R-I
31846

FILE: B-219585**DATE:** August 1, 1985**MATTER OF:** Dunbar & Sullivan Dredging Co.**DIGEST:**

1. Whether contractor violates regulations prohibiting use of foreign-built dredges in the United States is a matter for the Maritime Administration, not for GAO.
2. An allegation that a small business contractor is utilizing a dredge owned by a large business contrary to the intent of the small business set-aside procedures under 13 C.F.R. § 21.2 (1985) is a matter of contract administration and is the responsibility of the procuring agency rather than GAO.

Dunbar & Sullivan Dredging Co. (Dunbar & Sullivan) protests the award of a maintenance dredging contract to Dissen & Juhn Corporation (Dissen & Juhn) under solicitation No. DACW49-85-B-0019 issued by the Department of the Army. The protester contends that the contract should be terminated for two reasons: (1) Dissen & Juhn allegedly is violating the provisions of 46 U.S.C. § 292 (1982), which forbids the use of foreign-built dredges in the United States; and (2) the awardee no longer qualifies under 13 C.F.R. § 21.2 (1984) as a "small business" for the purposes of the small business set-aside because it is using equipment owned by a foreign company that has not met the requirements of a "small business."

We dismiss the protest.

The solicitation involved in the dredging contract required the contractor to furnish all plant, labor, material and equipment necessary to remove and dispose of dredge material from three harbors. The procurement was a 100-percent small business set-aside. The protester

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alleges that Dissen & Juhn is dredging at least one harbor with the "Pitts Carillon," a dredge owned by Pitts Engineering Construction, a division of Banister Continental Ltd., Markham, Ontario, Canada, in violation of 46 U.S.C. § 292. Section 292 provides that a foreign-built dredge shall not engage in dredging in the United States, unless documented as a vessel of the United States, under penalty of forfeiture.

Concerning the possible violation of 46 U.S.C. § 292, which requires forfeiture of the vessel, this is a matter under the jurisdiction of the Maritime Administration, which has the enforcement responsibility under the law. Cove Shipping, Inc., B-215864, Oct. 19, 1984, 84-2 C.P.D. ¶ 423.

Dunbar & Sullivan also asserts that the use of the foreign equipment precludes Dissen & Juhn from meeting the requirement that a firm must dredge a minimum of 40 percent of the yardage with its own dredging equipment or with equipment owned by another small dredging concern to qualify as a "small business."

The awardee took no exception to the requirements in its bid and was responsive. Therefore, the protest constitutes a challenge to Dissen & Juhn's performance of the contract. We will not review these allegations since whether the contractor actually complies with the terms of the contract during performance is a matter of contract administration. Contract administration matters are not for resolution under our Bid Protest Regulations, 4 C.F.R. part 21 (1985), which are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory and other legal requirements rather than for considering postaward performance or administrative matters. Eclipse Systems, Inc., B-216002, Mar. 4, 1985, 85-1 C.P.D. ¶ 267. A contractor's compliance with the obligations of a contract has no effect on the validity of the contract award. 50 Comp. Gen. 697 (1971).

The protest is dismissed.



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