

# DECISION



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

**FILE:** B-221851 **DATE:** May 22, 1986  
**MATTER OF:** Ocean Enterprises, Ltd.

## DIGEST:

Subcontractor selection is not made for the government within the meaning of the exception allowing General Accounting Office review because the prime contractor is not operating a government-owned facility and is not otherwise serving as a mere conduit between the government and the subcontractor.

Ocean Enterprises, Ltd. (OEL), protests the award of a subcontract to Buccaneer Marine, Ltd. (Buccaneer), under request for quotations (RFQ) No. 34-468-00 issued by Science Applications International Corporation (SAIC), a prime contractor performing services for the United States Department of the Navy. The RFQ called for the bare boat charter of a vessel at the Santa Cruz Acoustic Range Facility (SCARF) on Santa Cruz Island, California. OEL argues that SAIC gave the awardee unfair competitive advantages and improperly analyzed the proposed costs. We dismiss the protest.

SCARF is an ocean laboratory and measurement facility which is used for experiments and tests requiring an open ocean environment. In particular, nearly all high speed acoustical trials of Navy ships and submarines are performed there. The facility entails little more than one acre of land, which is leased by SAIC from a private owner, on the Santa Cruz Island and an offshore area which apparently is owned by the federal government.

On October 1, 1984, the Navy awarded SAIC a cost-plus-fixed-fee contract under which SAIC was to provide all necessary support services required to conduct Navy operations involving SCARF and/or SCARF support vessels. The contract requires SAIC to provide a support vessel to assist the Navy in its testing operations at the facility, and SAIC initially met this requirement when it awarded a charter to OEL for a vessel for the period of February 5, 1985, to September 30, 1985.

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On July 19, 1985, SAIC issued RFQ No. 34-468-00 to provide a continuation of the vessel services. The solicitation included 23 lease vessel specifications that had to be met in order to accomplish the work performed by the charter vessel. Since these specifications require hull modifications to the craft, the RFQ provided that the vessel specifications would "be aboard, in place and operating when the vessel goes on charter," instead of requiring the specifications to be met at the time of the offer. The solicitation further provided that the performance period will be October 1, 1985, through September 30, 1986, with an option for the 2-year period of October 1, 1986, through September 30, 1988. The solicitation set August 9 as the closing date for the receipt of quotations.

As an initial matter, the Navy argues that the protest should be dismissed because it involves a subcontract award over which our Office lacks jurisdiction. Our Office does not review subcontract awards by government prime contractors except where the award is by or for the government. GAO Bid Protest Regulations, 4 C.F.R. § 21.3(f)(10) (1985). This limitation on our review is derived from the Competition in Contracting Act of 1984, 31 U.S.C.A. § 3551, et seq. (West Supp. 1985), 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 (GOCO) plants; and procurements by construction management prime contractors. Information Consultants, Inc., B-213682, Apr. 2, 1984, 84-1 C.P.D. ¶ 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 or conduit between the government and the subcontractor and, as a result, the subcontract is said to be "for" the government. Rohde & Schwarz-Polarad, Inc.--Reconsideration, B-219108.2, July 8, 1985, 85-2 C.P.D. ¶ 33.

OEL does not assert that this case involves a purchase of equipment for a GOCO plant or a procurement by a construction management prime contractor. Rather, it appears to argue that the situation here is similar to a subcontract awarded by a prime contractor operating and managing a Department of Energy facility. It contends that SCARF is a government-owned facility for which SAIC provides large-scale management services and has ongoing purchasing responsibility. The Navy contends that none of the circumstances in which our Office has found jurisdiction over subcontract awards are present here and, therefore, this subcontract is not "for" the government. We agree with the Navy.

As evidence of its position, OEL initially points to several documents and brochures prepared prior to this protest being filed in which the Navy and SAIC both characterized SCARF as a GOCO which is operated by SAIC. These documents, however, do not serve as a determination of the legal status of these parties. In particular, the Navy documents were prepared by technical personnel who were not familiar with the legal or contractual meaning of the term GOCO. Further, the Navy has established procedures for the establishment and maintenance of GOCO's and there has not been any determination under these procedures that SCARF is a GOCO. See SECNAV Instruction 4862.8A, Dec. 18, 1981; Department of Defense Directive 4275.5, Oct. 6, 1980.

In order for a facility to be a GOCO, the government must own the facility and that facility must be operated by the contractor. The Navy, however, does not own the land on which SCARF is based--the prime contractor leases the land from a private owner. The site primarily consists of equipment housed in relocatable buildings and trailers; there is no permanent facility or plant.

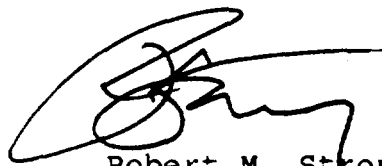
Further, the contract between the Navy and SAIC indicates that SAIC does not operate SCARF, that is, it does not provide large-scale management services. A review of the contract between the Navy and SAIC establishes that this is a support services contract under which the contractor provides maintenance and operational assistance to the Navy, while the Navy manages the project operations at the site. In particular, the statement of work set forth in the contract shows that the primary duties under the contract are to provide technical and logistical services in support of testing operations and to maintain government-furnished and contractor-owned or leased equipment. For example, SAIC

is to inspect, operate, maintain, and repair all of the government-furnished equipment (GFE) located at SCARF and on board the various support vessels and, here, it is to provide a vessel to accomplish specified services necessary to support Navy testing operations. We note that the task assignments issued pursuant to the contract merely reiterate tasks set forth in the contract and serve only to obligate funds under the contract.

Further, the contract provision estimating the number of man-hours per year necessary to perform the contract demonstrates that this contract is for support services. The contract estimates that 20,000 man-hours a year will be required to perform the contract, but less than 2,000 hours of that total are for managerial/operation functions. Thus, SAIC is providing some management services, but they constitute less than 10 percent of services under the contract and, therefore, the prime contractor is not principally providing management services.

Since SAIC is not providing large-scale management services to the government, it follows that it does not have an ongoing purchasing responsibility. SAIC's purchasing responsibilities are incidental to performance of its support and maintenance tasks. For example, its duty is to repair GFE and it is to make any purchases necessary in order to meet that duty. Similarly, here, SAIC is to operate a vessel to support Navy testing operations and it is responsible for meeting that obligation, whether it is necessary for the firm to lease the vessel or not. The subcontract for Buccaneer's vessel binds SAIC, not the Navy. Moreover, there is no indication in the Navy's contract with SAIC that SAIC is to purchase "for" the government.

We therefore conclude that SAIC is not acting as a middleman or conduit between the government and the subcontractor. Thus, SAIC is not acting for the government in awarding subcontracts and we therefore will not review this procurement. See American Medical Supply & Service Corp.--Request for Reconsideration, B-219266.2, July 24, 1985, 85-2 C.P.D. ¶ 80; Rohde & Schwarz-Polarad, Inc.--Reconsideration, B-219108.2, supra.



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