



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Techniarts Engineering
File: B-230263
Date: March 30, 1988

DIGEST

The General Accounting Office will not review the award of a subcontract by a Small Business Administration 8(a) subcontractor where it is not shown that the 8(a) subcontractor was acting as the government's agent in the procurement.

DECISION

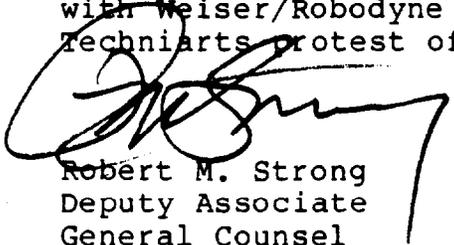
Techniarts Engineering protests the award by Advanced Exterior Cleaning & Contracting Co., Inc. (AECC), of a contract to Weiser/Robodyne Corporation under solicitation No. DE-AC22-87PC79513. The U.S. Department of Energy Technology Center in Pittsburgh, Pennsylvania, solicited offers for renovation of its conference room. The contract was awarded to AECC pursuant to Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982). Under the 8(a) program, the Small Business Administration enters into contracts with government agencies and arranges for performance by awarding subcontracts to socially and economically disadvantaged small business concerns--in this case AECC. AECC, in turn, awarded a subcontract to Weiser/Robodyne. It is this award which Techniarts protests. Techniarts contends that the government improperly interfered in the subcontracting selection process by directing AECC to award to a particular subcontractor (Weiser/Robodyne) even though Techniart's bid was acceptable and lower in price.

The agency's position is that we should not consider this protest because it involves the award of a subcontract by a government prime contractor and that the circumstances under which we consider such protests do not exist here. We agree. Because the contract was not awarded by or for a federal agency, we dismiss the protest.

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Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551(1) (Supp. III 1985), this Office has jurisdiction to decide protests involving contract solicitations and awards by federal agencies. We have interpreted this provision as authorizing us to decide protests of subcontract solicitations and awards only when the subcontract is "by or for the government." 4 C.F.R. § 21.3(f)(10) (1987). Basically, a subcontract is considered to be by or for the government when 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. American Nuclear Corporation, B-228028, Nov. 23, 1987, 87-2 CPD ¶ 503. Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse Electric Corp., B-227091, Aug. 10, 1987, 87-2 CPD ¶ 145, otherwise provides large scale management services, Union Natural Gas Co., B-224607, Jan. 9, 1987, 87-1 CPD ¶ 44, serves as an agency's construction manager, C-E Air Preheater Co., Inc., B-194119, Sept. 14, 1979, 79-2 CPD ¶ 197, or functions primarily to handle the administrative procedures of subcontracting with vendors effectively selected by the agency. University of Michigan, et al., B-225756, et al., June 30, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 643. Except in these limited circumstances, a subcontract awarded by a government contractor in the course of performing a prime contract generally is not considered to be "by or for" the government.

We do not believe this case falls within any of the above limited circumstances. First the construction project is for a limited purpose and does not entail ongoing purchasing responsibilities. Second, while Techniarts alleges that the government directed the selection of the subcontractor, this does not indicate that the prime contractor is acting as the government's agent in the procurement, which is the only circumstance under which we have interpreted CICA to authorize review of subcontract awards by our Office. Rhode & Schwarz-Polarad, Inc.--Reconsideration, B-219108.2, July 8, 1985, 85-2 CPD ¶ 33. Finally, while AECC chose to subcontract some of the work required under its contract, there is no indication that in so doing it was acting as a mere conduit for the government. Because the subcontract with Weiser/Robodyne is not by or for the government, Techniarts protest of that award is dismissed.



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