



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aviation Data Service, Inc.--Reconsideration
File: B-238057.2
Date: April 11, 1990

Harry L. Najim, Esq., Najim & Baker, for the protester.
Thomas E. Flatley, Jr., Esq., Federal Aviation
Administration, for the agency.
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Dismissal of protest against awards by a government prime contractor to subcontractors which allegedly cannot meet technical requirements for the development of an international aircraft operator database is affirmed, since the General Accounting Office has no jurisdiction to review subcontracts awarded by a prime contractor when the subcontract awards are not made "by or for the government."

DECISION

Aviation Data Service, Inc. (AvData), requests reconsideration of the dismissal of its protest concerning the award of three subcontracts by Wichita State University (WSU) pursuant to its contract No. DTFA03-89-C-00057 with the Federal Aviation Administration (FAA). We dismissed the protest because it did not involve any of the limited circumstances under which we review challenges to subcontract awards under our Bid Protest Regulations, 4 C.F.R. § 21.3(m)(10) (1989).

We affirm the dismissal.

On September 27, 1989, FAA awarded a contract to WSU for the development of an expanded international civil aviation database and to implement and validate a prototype computerized filing system for identifying aircraft owner/operators and tracking aircraft modifications.

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Subsequently, WSU issued a subcontract solicitation for two separate tasks: (1) aircraft operator information and (2) feasibility demonstration. Several bids were received by the bid opening date of November 21, 1989. On December 4, WSU awarded three subcontracts for Task 1 and awarded a subcontract for Task 2 to AvData.

AvData submitted its protest to our Office on December 15, 1989. AvData argued that the three offerors awarded the subcontracts for Task 1 cannot meet the technical requirements of the solicitation and that its proposal was most advantageous for award. Our Office dismissed the protest because we only review subcontract awards by government prime contractors where the award is "by or for the government." 4 C.F.R. § 21.3(m)(10).

On January 3, 1990, AvData requested reconsideration of its protest, arguing that the FAA had intended to avoid "legal and ethical considerations" by having WSU act as the government's agent to obtain direct access to the database created and maintained by AvData, and that, by making subcontract awards to the three other offerors, WSU effectively "subverted" FAA's original intent to acquire only AvData's database.

Our limited bid protest review of subcontract awards is based on our statutory authority to consider bid protests involving the procurements of federal agencies. See 31 U.S.C. §§ 3551 et seq. (Supp. V 1987). Obviously, a prime contractor normally is not a federal agency and is not viewed as such merely because it awards a subcontract pursuant to a prime contract with the government. However, in certain circumstances, where it is clear that the prime contractor essentially is acting on behalf of the government, we view the prime contractor's actions as coming within the scope of our jurisdiction.

Generally, a subcontract is considered to be "by or for the government" where the prime contractor principally provides large-scale management services to the government and, as a result, generally has on-going purchasing responsibility. In effect, the prime contractor acts as a middleman or a conduit between the government and the subcontractor. American Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD ¶ 503. Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse Elec. 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, or functions primarily to handle the administrative procedures of subcontracting with vendors actually selected

by the agency. University of Mich., et al., 66 Comp. Gen. 538 (1987), 87-1 CPD ¶ 643. In other circumstances, we will only assume jurisdiction where the government's involvement in the subcontractor selection is so pervasive that the contractor is a mere conduit for the government. See Perkin-Elmer Corp., B-237076, Dec. 28, 1989, 89-2 CPD ¶ 604.

WSU is not providing large-scale management services as described above, but rather is performing a contract for the development of an international civil aviation operator database. Moreover, the protester does not even allege that the FAA had any role in the selection of the successful subcontractor. Indeed, the protester alleges that the subcontract awards were contrary to FAA's original intent. Thus, there is no indication that the agency's involvement was pervasive or that it "took over" the procurement from the prime contractor. See Perkin-Elmer Corp., B-237076, supra. We therefore cannot find that the subcontract procurement is "by or for the government." We have no jurisdiction to consider this matter.

Accordingly, the prior dismissal is affirmed.



for James F. Hinchman
General Counsel