

Lebowitz



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Cajar Defense Support Company
File: B-240680
Date: August 24, 1990

Mason Ford, for the protester.
David W. Oglesby, Research Triangle Institute, an interested party.
William R. Medsger, Esq., and Michael P. Mahoney, Esq., Department of the Army, for the agency.
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging subcontract solicitation terms is dismissed because the solicitation for subcontractor services was issued by a government prime contractor which is not acting as the government's agent and the award will not be made "by or for the government."

DECISION

Cajar Defense Support Company protests the terms of a solicitation for subcontractor services to produce a fuze shock and vibration handbook under request for proposals (RFP) No. RTI90-01-3731 issued by Research Triangle Institute (RTI), the prime contractor under contract No. DAAA09-86-D-0009 awarded to RTI by the United States Army Armament, Munitions and Chemical Command at Rock Island, Illinois.

We dismiss the protest since this subcontractor protest is not for consideration under our Bid Protest Regulations, 4 C.F.R. § 21.3(m)(10) (1990).

RTI is a nonprofit contract research corporation located in North Carolina which performs approximately 90 percent of its research for the government. Under its contract referenced above, RTI, as the prime contractor, is responsible for producing engineering design handbooks on a priority basis as determined by the Army. While some of the handbooks are produced in-house by RTI, the majority of the handbooks are prepared by technically qualified subcontractors in the appropriate research disciplines.

049311 / 142093

In July, 1989 and February, 1990, RTI synopsized in the Commerce Business Daily its own requirement for a subcontractor to prepare the fuze shock and vibration handbook. The solicitation was issued by RTI on June 29, 1990, at which time RTI sent a copy of the solicitation to Cajar and other potential subcontractors. While Cajar did not submit a proposal by the closing date for receipt of proposals on August 3, RTI did receive six proposals from other firms.

Cajar basically complains that it had insufficient time to prepare and submit a proposal before the closing date for receipt of proposals. Cajar also complains that neither RTI nor the Army responded to its request for a 2-month extension to the closing date.

We will not consider this protest because it involves an alleged impropriety in a subcontract solicitation. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(1) (1988), our 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(m)(10).

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 ongoing purchasing responsibility. SRI International, B-237779, Mar. 22, 1990, 90-1 CPD ¶ 318. Such circumstances exist where the prime contractor operates and manages a government facility, otherwise provides large scale management services in a government facility, serves as an agency's construction manager, or functions primarily to handle the administrative procedures of subcontracting with vendors effectively selected by the agency. Id. Except in these limited circumstances in which the prime contractor is basically acting as the government's agent, a subcontract awarded by a government contractor in the course of performing a prime contract generally is not considered "by or for the government." ToxCo, Inc., 68 Comp. Gen. 635 (1989), 89-2 CPD ¶ 170.

Here, under RTI's prime contract with the Army, RTI is not acting as the government's agent; it is contractually responsible to the Army for producing engineering design handbooks for the government. Instead of producing the fuze shock and vibration handbook in-house, RTI synopsized its own requirement for a subcontractor to prepare the handbook.

To carry out its responsibilities, RTI has elected to award a subcontract to a firm to prepare the handbook, but RTI will ensure that the subcontractor's handbook meets the government's specifications. Therefore, we have no jurisdiction to consider Cajar's protest since this subcontract solicitation will not result in an award "by or for the government."1/

Accordingly, the protest is dismissed.

Michael R. Golden

Michael R. Golden
Assistant General Counsel

1/ We point out that in Cajar Defense Support Co., B-240477, Aug. 3, 1990, 90-2 CPD ¶ _____, we held with respect to the issue of a 2-month extension to the closing date for receipt of proposals under a solicitation issued directly by a federal agency that there is no legal requirement for an agency generally to grant more than 30 days for a firm to respond to a solicitation absent a showing that the time allowed was inconsistent with statutory requirements or otherwise unreasonable or insufficient, or that it precluded full and open competition. As in that case, Cajar offers no specific reason why the amount of time permitted--35 days--was not sufficient.