



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: United Applied Technologies, Inc.

File: B-238794.2

Date: September 12, 1990

Rodney Bradford for the protester.
Michael I. Spearing, Esq., University of Alabama, for the
prime contractor.
Herbert F. Kelly, Jr., Esq., and Mike Lansberry, Esq.,
Department of the Army, for the agency.
Amy M. Shimamura, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging the propriety of a subcontract awarded
by a government prime contractor independent of the
contracting agency is dismissed since it was not made "by or
for the government."

DECISION

United Applied Technologies, Inc. (UAT) protests the award
of a fixed-price subcontract under the University of
Alabama--Huntsville's (UAH) prime contract (No. DASG60-89-
C-0129) with the U.S. Army Strategic Defense Command (SDC).
The subcontract was awarded to Nashville Machine Company,
Inc., under request for proposals (RFP) No. 89-201, issued
by UAH for the relocation of an aerophysics research
facility from Galeta, California to Huntsville, Alabama.

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

On September 15, 1989, UAH was awarded a \$9.5 million cost
reimbursement research contract (prime contract) by the SDC
for the establishment of an Aerophysics Test Program with a

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planned completion date of September 19, 1992.^{1/} UAH recently acquired a unique hypervelocity range and other assets, necessary for the establishment of the test program, from Delco Electronics Corporation, a subsidiary of General Motors Corporation (GM), located in Galeta, California.^{2/}

On October 3, UAH issued the protested solicitation to obtain services for the inventory, disassembly, transportation, reassembly and check out of the test facility under a firm, fixed-price subcontract under its prime SDC contract. The solicitation requires the subcontractor to furnish the management, labor, equipment, and transportation necessary to accomplish the relocation of \$40 to \$75 million worth of contractor-owned equipment and \$250,000 worth of government-owned equipment, and to reestablish the test facility at the Redstone Arsenal in Huntsville, Alabama. Three offerors (UAT, Nashville and Mason & Hanger-Silas Mason Co., Inc.) submitted proposals in response to the RFP by the November 27 closing date for proposals. Nashville was selected for further negotiations, and awarded the subcontract on June 15. After receipt of the notification letter on June 20, UAT filed this protest on July 5.

UAT contends that the subcontract should be terminated and the requirement recompeted because the subcontract award was improperly made to a firm proposing a significantly higher price. UAT also contends that the subcontract work was significantly reduced from the solicitation scope of work and that the UAH withheld documentation from the potential offerors that was vital to proposal preparation. UAT also

^{1/} The program will provide essential hypervelocity/aerophysics test capability to accomplish measurements and analyses for the Strategic Defense Initiative Organization/SDC, Army Missile Command, Air Force Ballistic Systems Division, Defense Nuclear Agency, Defense Advanced Research Projects Agency, other government agencies and private contractors.

^{2/} The GM Delco ballistic range was begun in 1961 with several contractors and federal government agencies participating. The SDC (and the previous Ballistic Missile Defense Advanced Technology Center) has utilized the ballistic range since 1975. The Delco range was shut down in June 1988. Delco intends to use the building housing the range for other purposes and has provided the range equipment, instrumentation, support machines and tools to UAH as a gift.

asserts that there possibly was collusion between UAH and Army personnel concerning the conduct of the procurement. We will not consider these contentions because this subcontract award is not subject to our bid protest jurisdiction.

Under the Competition in Contracting Act, 31 U.S.C. § 3551 (1988), this Office has jurisdiction to decide protests involving contract solicitations and awards by federal agencies. We therefore will not consider subcontractor protests except where 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 circumstances are such that the prime contractor essentially is acting as a middleman or conduit between the government and the subcontractor. 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, 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., 66 Comp. Gen. 538 (1987), 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."

UAT contends that this Office has jurisdiction to decide its protest because UAH, in conducting the protested procurement, acted as a mere agent of the SDC. We disagree. The prime contract specifically provides that UAH is not acting as an agent of the government. Indeed, the record indicates that UAH acted independently of the agency; UAH prepared the RFP, conducted the pre-proposal conference and evaluated proposals without the direction or participation of the Army. UAT alleges that there was the possibility of collusion between UAH and Army personnel. However, the protester has provided no evidence in support of its allegation.^{3/}

^{3/} UAT alleges that the Army colluded with UAH in order to circumvent the conflict of interest provisions to ensure that Mason & Hanger would be awarded the subcontract and that UAH and the Army deliberately withheld from offerors

(continued...)

Moreover, the protested subcontract essentially involves the move of contractor-owned equipment to a facility that is being constructed with contractor funds. Thus, there will be no government-owned facility involved in the performance of the prime contract's requirements. Further, the prime contract requires the contractor to operate and manage the contractor-owned facility that is to be established and to pay for all costs associated with the daily operation of the facility. Under the prime contract, UAH is responsible for, and will not be reimbursed for, any costs and expenses related to utilities, personnel, maintenance and operation, insurance, taxes and liabilities associated with the daily operation of any facilities it constructs to establish the capabilities of the Aerophysics Test Program.

Since the record establishes that UAH is not operating or managing a government-owned facility, or providing large-scale management services or serving as the agency's construction manager, the protested subcontract was not made by or for the government.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel

3/(...continued)
the "Aerophysics Facility Relocation Planning Study," that was prepared by Mason & Hanger for SDC as a subcontractor under another Army prime contract. However, Nashville, not Mason & Hanger, received the award, so these allegations are not pertinent to this protest.