



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

## Decision

**Matter of:** Royal Investigation and Patrol, Inc.  
**File:** B-250690  
**Date:** February 17, 1993

Edmund J. Young for the protester,  
Bradley E. Luxson, Esq., and Kenneth A. Markison, Esq.,  
Department of Housing & Urban Development, for the agency,  
Catherine M. Evans, Esq., and John M. Melody, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

Protest challenging award of subcontract by Department of Housing & Urban Development prime contractor is dismissed as outside General Accounting Office (GAO) jurisdiction where subcontractor selection was not made "by or for" the government.

### DECISION

Royal Investigation and Patrol, Inc. protests the award of a contract to Beijing Private Security Services, Inc. under request for proposals (RFP) No. S-GTA-92-002, issued by the John Stewart Company (JSC) for security guard services at Geneva Towers, a San Francisco, California multifamily housing project owned by the Department of Housing and Urban Development (HUD).

We dismiss the protest.

JSC manages the Geneva Towers project under a contract with HUD. Under the contract, JSC is responsible for providing all services incident to the day-to-day management of the apartment complex, including subcontracting for services as necessary. Pursuant to this responsibility, JSC prepared the RFP here for a subcontract for security guard services, and submitted it to HUD for approval. Among the 15 offerors were Royal, with a proposed price of \$939,422.40, and Beijing, with a proposed price of \$1,389,920. Upon learning that JSC had selected Beijing for the award, Royal filed this protest. Royal essentially objects to the award decision on the basis that its proposal satisfied the RFP requirements at a much lower cost.

Under the Competition in Contracting Act of 1984 (CICA), our Office has jurisdiction to resolve bid protests concerning solicitations and contract awards that are issued "by a Federal agency," 31 U.S.C. § 3551(1) (1988). In the context of subcontractor selections, we interpret the Act to authorize our Office to review protests only where, as a result of the government's involvement in the award process or the contractual relationship between the prime contractor and the government, the subcontract in effect is awarded on behalf of the government, that is, where the subcontract is awarded "by or for" the government. See Ocean Enters., Ltd., 65 Comp. Gen. 585 (1986), 86-1 CPD ¶ 479, aff'd, 65 Comp. Gen. 683 (1986), 86-2 CPD ¶ 10. For example, we have considered subcontractor selections to be "for" the government where they concern; (1) subcontracts awarded by prime contractors operating and managing certain Department of Energy facilities; (2) purchases of equipment for government-owned, contractor-operated plants; and (3) procurements by construction management prime contractors. See id. In each of these situations, 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 awarded "for" the government. Id. We have considered subcontractor selections to have been made "by" the government where the agency's involvement in the selection process was so pervasive as to amount to a procurement by the government. See University of Michigan; Industrial Training Sys. Corp., 66 Comp. Gen. 538 (1987), 87-1 CPD ¶ 643.

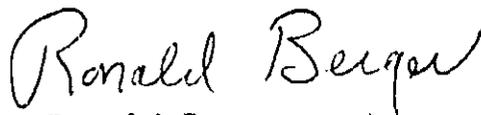
The subcontract award here does not meet either of these standards. First, there is no indication that JSC is merely acting as a middleman or conduit between the government and the subcontractor. While JSC does provide management services for a government-owned facility, it is not performing the type of large-scale governmental operations resulting in ongoing purchasing responsibility that would render its subcontract awards "for" the government. In this regard, although JSC is responsible for day-to-day management functions, HUD retains responsibility for maintenance, repair and construction needs. Moreover, while Geneva Towers is owned by the government, it is not a "government facility" as defined by the Federal Acquisition Regulation (FAR). The FAR defines a government facility in the context of a management and operating contract as a "research, development, special production, or testing establishment." FAR § 17.601. Thus, a Department of Energy research and testing facility qualifies as a government facility for the purpose of applying the "by or for" exception to a subcontract awarded by the prime contractor

that manages and operates the facility. A HUD multifamily housing project, on the other hand, does not.

Further, the subcontract is not one essentially awarded "by" the government. HUD was not involved in the development of the solicitation requirements or award criteria, nor was it involved in the evaluation of proposals. The agency's only role in the selection process here was to approve the RFP that JSC had prepared, and to approve JSC's selection of Beijing once JSC had completed the evaluation. The mere approval of the solicitation and final subcontractor selection does not amount to the active and direct participation required for us to find that a procurement essentially has been conducted by the government. Edison Chouest Offshore, Inc.; Polaris Marine Partners, B-230121.2; B-230121.3, May 19, 1988, 88-1 CPD ¶ 477.

We conclude that JSC's award to Beijing is not a subcontract award "by or for" the government. Accordingly, we are without jurisdiction to review the matter.

The protest is dismissed.

  
Ronald Berger  
Associate General Counsel