



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Unitron Incorporated

**File:** B-259994; B-259994.2

**Date:** May 4, 1995

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### DECISION

Unitron Incorporated protests the award of a contract to FCX Systems, Inc. under request for quotations (RFQ) No. 8000M6Q-24-94, issued by Boeing Sikorsky Aircraft Support (BSAS) for frequency converters used to service aircraft at Fort Campbell, Kentucky.

We dismiss the protest.

Under Contract No. DAAJ09-93-C-0488, BSAS provides life cycle contractor support for MH-47E AND MH-60K special operations aircraft, including on-site contractor support, deployment support, and replenishment support, as well as certain additional "over and above" work such as replenishment and repair of tools and test equipment. Pursuant to a request from the 160th Special Operations Aviation Regiment (Airborne) at Fort Campbell, the contracting officer at the U.S. Army Aviation and Troop Command asked BSAS to initiate the purchase of frequency converters, to ensure a supply of reliable power for aircraft hangars. Pursuant to this request, BSAS sought and obtained quotations from two suppliers--the protester, Unitron, and the awardee, FCX. Although the BSAS evaluators apparently considered the converters offered by FCX to be of somewhat better quality, BSAS recommended award of a subcontract to Unitron, which offered a slightly lower price and shorter delivery schedule. After consulting with the personnel at Fort Campbell, the administrative contracting officer (ACO) instead approved award to FCX.

Unitron objects to the award on the basis that BSAS never identified quality as a basis for evaluation and that based on price and delivery terms--the only evaluation factors allegedly mentioned by BSAS in the RFQ--Unitron should have received award. Unitron argues that our Office has jurisdiction over its protest because, in Unitron's view, the ACO's approval of an award to FCX, pursuant to Federal Acquisition Regulation (FAR) § 52.244-1 Alternate I, Subcontracts (Fixed-Price Contracts), incorporated into Contract No. DAAJ09-93-C-0488 by reference, constituted

pervasive involvement in the procurement so that the subcontract was "by or for" the government.

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 "[f]ederal 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.

We have previously and specifically addressed situations where the agency declines to approve award, pursuant to a clause such as FAR § 52.244-1 requiring the government's approval of subcontracts, and have concluded that a procurement is neither by nor for the government merely because the agency approved or disapproved a subcontractor selected by the prime contractor or because the agency effectively directed the subcontractor selection. See ToxCo, Inc., 68 Comp. Gen. 635 (1989), 89-2 CPD ¶ 170; Kerr-McGee Chemical Corp., B-252979, May 3, 1993, 93-1 CPD ¶ 358; Perkin-Elmer Corp., Metco Div., B-237076, Dec. 28, 1989, 89-2 CPD ¶ 604. In those cases where we have assumed jurisdiction over subcontract awards, the government's involvement was found to be so pervasive that it effectively took over the procurement, including the evaluation of proposals and source selection, such that the prime contractor was a mere conduit or instrumentality of the

government. See, e.g., University of Michigan; Industrial Training Sys. Corp., supra.

Here, by contrast, BSAS is not providing large-scale management services; its duties relate primarily to providing maintenance services unique to special operations aircraft, where agency personnel have limited experience and resources to maintain the unique features of those aircraft. The contractor's success is measured chiefly by its ability to keep the aircraft operational; its functions are chiefly maintenance and program management, as well as management of replenishment stock. Even in management of replenishment stock, there is no specific requirement that BSAS purchase needed items, once BSAS recommends adjustments to stockage levels, as opposed to requisitioning them. While it may be necessary for the contractor to assume some purchasing responsibility, there is nothing to indicate that this responsibility involves any great volume of purchasing or represents a significant portion of the statement of work.

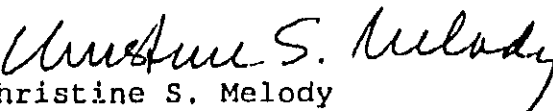
Beyond identifying the requirement, the agency's involvement in the issuance of the solicitation was limited; agency personnel provided BSAS with a guide specification which, the protester concedes, was drafted primarily by Unitron itself.<sup>1</sup> Although the record indicates that government personnel met twice with BSAS personnel to review the draft statement of work, Unitron provides, and our Office has found, no evidence of any substantial agency involvement in the actual drafting and issuance of the solicitation. While Unitron contends that the agency actually evaluated proposals, the protester concedes that, in fact, the agency had no access to either the published solicitation or the proposals themselves, apart from a summary prepared by BSAS personnel. The record therefore contains no evidence of any substantial government involvement in the procurement, beyond the exercise of its contractual right to approve the

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<sup>1</sup>The protester's own submissions state that the guide specification is neither a military standard nor a military specification; contains numerous blanks and brackets to be filled in; and is inapplicable to most of the converters being purchased.

award to FCX,<sup>2</sup> Accordingly, we see no basis for our Office to assume jurisdiction over the protest.

The protest is dismissed.

  
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<sup>2</sup>In fact, the agency points out, BSAS's solicitation does not even establish price as an evaluation factor or the relative weights of the factors to be considered and states as follows:

" . . . Elements that will be judged for this procurement will be functionality of units (both stationary and mobile units perform adequately), meeting required specifications, reliability and delivery time. . . ."

Unitron does not identify the basis for its assertion that the solicitation provided for evaluation of price. To the extent that Unitron objects to the solicitation itself or contends that the solicitation is ambiguous, a protest filed 3 months after the submission of proposals, such as this one was, would be untimely. See Watchdog, Inc., B-258671, Feb. 13, 1995, 95-1 CPD ¶ 69.