

Michael Golden



Comptroller General
of the United States

103196

Washington, D.C. 20548

Decision

Matter of: Unitron Incorporated--Reconsideration

File: B-259994.3

Date: June 19, 1995

DECISION

Unitron Incorporated requests reconsideration of our May 4, 1995, decision dismissing its protest of 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 affirm the dismissal.

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 statute 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. 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. Here, we found that beyond showing that the government had approved award to FCX instead of Unitron, as BSAS had recommended, Unitron had submitted no evidence of pervasive government involvement in the procurement; the exercise of a right to approve subcontracts, even if the agency effectively directs the subcontractor selection, does not make a procurement by

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or for the government. See Kerr-McGee Chemical Corp., B-252979, May 3, 1993, 93-1 CPD ¶ 358; ToxCo, Inc., 68 Comp. Gen. 635 (1989), 89-2 CPD ¶ 170; Perkin-Elmer Corp., Metco Div., B-237076, Dec. 28, 1989, 89-2 CPD ¶ 604.

Unitron essentially takes issue with our conclusion that the agency did not evaluate the proposals and points out that the contracting officer, in a sworn statement, referred to a review of the proposed award, conducted by the 160th Special Operations Aviation Regiment (SOAR) (Airborne) at Fort Campbell, where the converters were to be installed, as a "technical evaluation." The record before our Office, however, does not support this characterization.

In fact, neither the contracting officer nor personnel at the 160th SOAR had access to either the published solicitation or the proposals submitted in response, apart from a summary prepared by BSAS personnel. This summary was furnished to personnel of the 160th SOAR, who prepared a written response described at the time as a review of a proposed award, with "comments" thereon. The 160th SOAR's response made no effort to discuss either the proposals or prices; instead, it relates the unit's frustration in obtaining reliable power for the hangar, asserts the importance of selecting an experienced contractor, and suggests consideration of energy conservation costs. The response specifically concludes by qualifying the comments as being "from [the 160th SOAR's] perspective" and stating that apart from the unit's concerns, "the legality must be considered." Contrary to Unitron's assertions and the contracting officer's description, the document may not reasonably be termed an "evaluation."

In any event, as we stated in our initial decision, even if we were to assume jurisdiction, there is no support in the record for Unitron's assertion that the solicitation provided for award based on price and delivery terms. The solicitation contained no provision for the consideration of price, and the evaluation was in accordance with the factors listed in the solicitation, which stated that the evaluation would be based solely on ". . . functionality of units (both stationary and mobile units perform adequately), meeting required specifications, reliability and delivery time. . . ."

Unitron does not address this issue in its request for reconsideration, and, as in its original protest, furnishes no basis for its assertion that the solicitation provided for evaluation of price or for award based on price.

We affirm our prior decision.



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