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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-211876 **DATE:** July 11, 1983

MATTER OF: Mainstream Engineering Co., Inc.

DIGEST:

Substitution of offerors after closing where new offeror proposes to assume obligations of debarred sister firm is not permitted because substitution is for convenience of vendor and not by operation of law.

Mainstream Engineering Co., Inc. protests award to any other firm under request for proposals (RFP) No. 2-30465 (RAP) issued by the National Aeronautics and Space Administration's (NASA) Ames Research Center in California. We summarily deny the protest.

Raycomm Technical Services, Inc., a wholly-owned subsidiary of Raycomm Industries, Inc., submitted a proposal in response to the RFP, but NASA determined that the proposal could not be considered for award because the subsidiary was listed on the April 10, 1983 "Consolidated Listing of Debarred, Suspended and Ineligible Contractors." Mainstream, another subsidiary of Raycomm Industries, requests that Raycomm Technical Services' proposal be considered as though it had been submitted by Mainstream because the parent company has transferred Raycomm Services' field services operations to Mainstream. The transfer allegedly included responsibility for whatever work Raycomm Technical Services would perform if it were the successful offeror under the protested procurement. Alternatively, the protester requests it be permitted to submit a proposal under the RFP as Mainstream Engineering Co., Inc.

We find no legal merit to the argument that Mainstream should be substituted for Raycomm as an offeror for purposes of this procurement.

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We have permitted the transfer or assignment of rights and obligations arising out of proposals only where "such transfer is effected by operation of law" to a legal entity which is the complete successor in interest to the offeror, which includes situations involving merger, corporate reorganization, the sale of an entire business, or the sale of an entire portion of a business embraced by the proposal. Numax Electronics, Inc., 54 Comp. Gen. 580 (1975), 75-1 CPD 21. The rationale for our position is analogous to that behind the anti-assignment statutes, 41 U.S.C. § 15 (1976) and 31 U.S.C.A. § 3727 (1983) (formerly 31 U.S.C. § 203), which prohibit the assignment of Government contracts and claims. See 51 Comp. Gen. 145, 148 (1971); 43 id. 353, 372 (1963); Numax Electronics Inc., supra. The purpose of the statutes is:

> " * * * to secure to the Government the personal attention and services of the contractor; to render him liable to punishment for fraud or neglect of duty; and to prevent parties from acquiring more speculative interests * * * and from thereafter selling the contracts at a profit to bona fide bidders and contractors * * *." Thompson v. Commissioner of Internal Revenue, 205 F. 2d 73, 76 (3rd Cir. 1953).

In this case, the parent company has merely transferred its field services operation from one wholly-owned subsidiary to another for their mutual convenience, via a transaction that presumably could allow the eventual return of those operations to the debarred offeror. Such a transfer hardly equates to a transfer or assignment of rights and obligations by operation of law as would be required to justify the substitution of one offeror for another in a negotiated procurement.

As to Mainstream's contention that it should be allowed to submit an offer at this time, an agency may consider a proposal that is received after the date required in the solicitation only if one of the exceptions to the rule against considering late proposals applies. These exceptions do not contemplate the submission of a proposal after the field of competition has been defined as of the

specified due date. International Technologies, Inc., B-203216, May 29, 1981, 81-1 CPD 427; Harris Corporation, PRD Electronics Division, B-209154, October 13, 1982, 82-2 CPD 332.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States