

**DECISION**

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

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**FILE:** B-212107.3**DATE:** December 18, 1984**MATTER OF:** E.J. Murray Company, Inc.**DIGEST:**

1. GAO will not question an agency's affirmative determination of a bidder's responsibility in the absence of a showing of possible fraud or bad faith or that the solicitation's definitive responsibility criteria were not met.
2. GAO will not review under its protest procedures an agency's modification of a contract in the absence of an allegation either that the agency awarded the contract with the intention of later modifying it or that the modification goes beyond the scope of the original contract.
3. GAO does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions.

E.J. Murray Company, Inc., requests this Office to investigate the actions of the General Services Administration (GSA) in connection with a contract awarded to John C. Grimberg Company, Inc., under solicitation No. GS-11B-18700. The contract is for repairs and improvements at the Health and Human Services North Building in Washington, D.C. We dismiss the request.

Prior to the award of the contract to Grimberg, Murray filed a protest with this Office. Murray alleged, among other things, that Grimberg's bid was not responsive to the solicitation's Buy American Act, 41 U.S.C. §§ 10a-10d (1982), requirements because the bid listed as a proposed subcontractor a Swedish company that

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Murray said does not manufacture its equipment in this country. Murray complained also that the same subcontractor had not yet obtained the required Underwriters Laboratories (U.L.) listing for its energy management control system. We denied the protest as to the Buy American Act issue because we found that Grimberg had not taken exception to the Act's requirements, and therefore would be bound contractually to comply. We added that whether Grimberg was able to or ultimately did comply with the Act's requirements were, respectively, matters of affirmative responsibility and contract administration, which, under our Bid Protest Procedures, 4 C.F.R. §§ 21.3(g)(1) and (4) (1984), we generally do not review. We dismissed the protest as to the U.L. listing requirement because it too involved a challenge to the agency's affirmative determination of Grimberg's responsibility. See E.J. Murray Company, Inc., et al., B-212107 et al., Mar. 16, 1984, 84-1 CPD ¶ 316.

Murray now says it has just learned that GSA has granted Grimberg's request for a waiver of the contract's Buy American Act requirements and may be considering a waiver of the U.L. listing requirement. Murray wants this Office to investigate these matters and says that, if we do, it is certain the facts will demonstrate the validity of its contentions in the earlier protest. For the reasons discussed below, however, Murray's submission provides no basis for us to consider this matter further.

At the time we issued our prior decision, the agency was in the process of determining Grimberg's responsibility, one aspect of which was whether Grimberg, either alone or through a subcontractor, had the ability to comply with the Buy American Act and U.L. listing requirements of the solicitation. In awarding the contract to Grimberg, GSA necessarily decided that the firm was responsible, Marathon Enterprises, Inc., B-213646, Dec. 14, 1983, 83-2 CPD ¶ 690, that is, that it had the apparent ability to comply fully with the solicitation. Murray's latest submission, which states that what the firm earlier had said might occur actually may have occurred, in essence challenges the contracting officer's determination that, at the time of award, Grimberg was a responsible prospective contractor.

As we said in our prior decision, this Office generally does not review affirmative responsibility determinations. The only exceptions are when there is a showing that the responsibility determination possibly was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(g)(4). Murray has not alleged fraud or bad faith or that definitive responsibility criteria were not met. Thus, there is no basis for us to question the agency's affirmative determination of Grimberg's responsibility. Marathon Enterprises, Inc., supra. Compare Aesculap Instruments Corporation, B-208202, Aug. 23, 1983, 83-2 CPD ¶ 228, where we did review an affirmative responsibility determination because the protester alleged that the contracting officer knew prior to award that the awardee would not comply with the Buy American Act. In finding this allegation to be unsupported, however, we focused only on information the contracting officer had before him at the time he determined that the awardee was responsible. Although it appeared that the items actually delivered might not have been domestic--we recommended that the agency perform a more precise Buy American Act analysis in order to resolve the question--this fact was not relevant to the issue of whether the responsibility determination was proper when made.

Murray also appears to question the propriety of the alleged waiver of requirements in Grimberg's contract with GSA. Once the government awards a contract, however, issues involving changes, amendments, modifications or waivers are matters of contract administration. See Aul Instruments, Inc., B-199416.2, Jan. 19, 1981, 81-1 CPD ¶ 31. This Office generally will not consider such matters under its Bid Protest Procedures, 4 C.F.R. § 21.3(g)(1), Cray Research, Inc., 62 Comp. Gen. 22 (1982), 82-2 CPD ¶ 376, since our procedures are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory and other legal requirements. See Mil-Craft Mfg., Inc., B-214015, May 7, 1984, 84-1 CPD ¶ 512. This Office will review matters of contract administration only in response to allegations that, at the time of award, the agency intended to make changes after award, A.J. Manufacturing Company, 53 Comp. Gen. 838 (1974), 74-1 CPD ¶ 240, or that modification is beyond

the scope of the original contract and therefore should have been the subject of a new procurement. Cray Research, Inc., supra. In determining whether a modification is beyond the scope of the contract, this Office looks to whether the original purpose or nature of the contract has been changed so substantially that the contract for which the competition was held and the contract to be performed are essentially different. American Air Filter Co., Inc., 57 Comp. Gen. 285 (1978), 78-1 CPD ¶ 136.

In this case, Murray does not allege that the agency awarded the contract to Grimberg with the intention of later modifying it with respect to either the Buy American Act or the U.L. listing requirement. In addition, although Murray seeks to establish the significance of any waiver of the U.L. listing requirement by saying that the requirement "had an impact upon price," Murray does not allege, nor does its submission provide a basis for concluding, that the contract as modified is essentially different from that for which the competition was held. See American Air Filter Co., Inc., supra. Thus, there is no basis for us to question GSA's administration of Grimberg's contract.

Finally, this Office does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions. Pluribus Products, Inc., B-214924, May 23, 1984, 84-1 CPD ¶ 562.

The request is dismissed.

*Harry R. Van Cleve*  
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*Micrographics*