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DECISION

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

FILE: B-195675

DATE: February 6, 1980

MATTER OF: Bayou State Security Services, Inc. *DLG 03826*

DIGEST:

Protest by potential subcontractor of award made by prime is dismissed because protest does not meet any circumstances under which GAO considers subcontractor protests.

Bayou State Security Services, Inc. (Bayou), a joint venturer with Citadel Security Services, Inc., protests the award of a contract by Dravo Utility Construction, Inc. (DUCI) to Wackenhut Corporation (Wackenhut) for security services at Strategic Petroleum Reserve (SPR) sites. DUCI is an independent prime service contractor with the Department of Energy (DOE). We dismiss the protest because Bayou has not presented any evidence showing that this is a type of subcontract protest our Office will consider.

Our Office will consider subcontractor protests only in limited circumstances: (1) where the prime contractor is acting as a purchasing agent of the Government; (2) where the Government's active or direct participation in the selection of the subcontractor has the net effect of rejecting or selecting a potential subcontractor, or significantly limiting subcontract sources; (3) where fraud or bad faith is shown in the Government's approval of the subcontract award or proposed award; (4) where the subcontract is "for" an agency of the Government; or (5) where the questions concerning the award of subcontracts are submitted by Federal officials who are entitled to advance decisions by this Office. Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

[Protest Involving Subcontractor]

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Bayou bases its protest on several of the above circumstances. Bayou alleges that DUCI is a purchasing agent for the Government. Bayou also alleges that DOE's security officer unfairly influenced DUCI to award the contract to Wackenhut, and that DOE approved the subcontract award (circumstances 2 and 3). Lastly, Bayou contends that even though DUCI's contract provides for administration of the contract as though DUCI were an independent service contractor, DUCI performs the functions of a management contractor (circumstance 4).

There is nothing in the prime contract to indicate that DUCI is acting as an agent for DOE; that is, there is nothing which operates to directly bind the Government to DUCI subcontracts. See Magnetic Engineering Associates, Inc., B-191377, June 21, 1978, 78-1 CPD 448.

Regarding the alleged involvement of DOE's security officer in the selection of Wackenhut, Bayou has not presented any evidence to support this allegation, but has requested that our Office investigate the matter. It is not our practice to conduct investigations to establish whether a protester's speculative statements are valid; the protester has the burden of affirmatively proving its case. Solar Resources, Inc., B-193264, February 9, 1979, 79-1 CPD 95; see also, Industrial Coils Inc., B-194560, June 15, 1979, 79-1 CPD 426. We will consider protests of the award of subcontracts where it has been shown that the Government has so directly or actively participated in the selection of the subcontractor that the net effect of the Government participation was to cause or control the rejection or selection of a potential subcontractor, e.g., where the Government specifically recommended an award to a particular firm. Optimum Systems, supra at 773. Bayou has made no such showing.

Bayou's allegation that DOE approved the award to Wackenhut is also insufficient for us to consider the protest. This Office will not consider protests of the Government's approval of a subcontract award unless the protester shows bad faith on the part of procurement officials in approving the award. Industrial Coils, supra.

Bayou has not alleged that DOE's approval of the award to Wackenhut was in bad faith. In this regard we note that the alleged participation of the DOE security officer in the selection of Wackenhut does not relate to the approval of the subcontract by procurement officials.

Finally, as regards the management contractor issue, our Bid Protest Procedures state that we will consider protests of subcontract awards made "for" the Government. 4 C.F.R. § 20.1 (1979). We have traditionally considered awards "for" the Government to include awards made by prime management contractors which operated and managed Atomic Energy Commission (now DOE) facilities, and purchases of equipment for Government-owned, contractor-operated (GOCO) plants. Control Data Corporation, B-186672, December 15, 1976, 76-2 CPD 492. In addition, we have considered procurements by cost-type construction management prime contractors to be awards "for" the Government. C-E Air Preheater Co., Inc., B-194119, September 14, 1979, 79-2 CPD 197; See Blakeslee Prestress, Inc., Formigli Corporation and Dow-Mac Concrete, Ltd., B-190778, April 17, 1978, 78-1 CPD 297. DUCI does not fall within any of these categories.

The protest is dismissed.



Milton J. Secolar
General Counsel