



Comptroller General
of the United States

310311

Washington, D.C. 20548

Decision

Matter of: Hydro-Pure Systems Company

File: B-255252

Date: January 31, 1994

Walter Krywucki for the protester,
Ronald E. Cone, Department of Energy, for the agency,
Mary Curcio, Esq., and John Van Schaik, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Protest challenging award of subcontract by Department of Energy prime contractor is dismissed as outside the bid protest jurisdiction of the General Accounting Office where the subcontract was not awarded "by or for" the government.

DECISION

Hydro-Pure Systems Company protests the award of a subcontract by the Fernald Environmental Restoration Management Corporation (FERMCO) under solicitation No. DE-AC05-920R21972, FERMCO is a prime contractor under contract with the Department of Energy (DOE) responsible for the environmental clean up of DOE's Fernald facility in Ohio.

We dismiss the protest because our Office generally does not review the selection of subcontractors.

Specifically, our Office does not review subcontract awards by government prime contractors except where the award is by or for the government. 4 C.F.R. § 21.3(m)(10) (1993). This limitation on our review is derived from the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551 et seq. (1988), which limits our bid protest jurisdiction to protests concerning solicitations issued by federal contracting agencies. In the context of subcontractor selections, we interpret the Act to authorize our Office to review subcontractor protests only where, as a result of the government's involvement in the award process or due to the contractual relationship between the prime contractor and the government, the subcontract is in effect awarded on behalf of the government. Edison Chouest Offshore, Inc.; Polar Marine Partners, B-230121.2; B-230121.3, May 19, 1988, 88-1 CPD ¶ 477.

For example, we will consider protests regarding subcontracts awarded by prime contractors operating and managing DOE facilities; purchases of equipment for government-owned, contractor-operated plants; and procurements by construction management prime contractors. Ocean Enters., Ltd., 65 Comp. Gen. 585 (1986), 86-1 CPD ¶ 479, aff'd, 65 Comp. Gen. 683 (1986), 86-2 CPD ¶ 10. 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. Id.

The subcontract award here does not meet this standard. Fernald previously was a production facility for uranium feed materials and was operated under a management and operating contract, which has ended. Under its contract, FERMCO is not providing large scale management services. Rather, FERMCO is cleaning up the Fernald site, and any management of the facility is incidental to the cleanup.¹ In this regard, DOE reports that the Fernald facility is no longer operational and that the purpose of the FERMCO contract is to decontaminate and decommission the site.

In addition, any purchases by FERMCO are for its own purposes in performing the contract, not for DOE. Under its (prime) contract, FERMCO is responsible for procurement planning, solicitation and award of subcontracts. The prime contract requires FERMCO to prepare bid packages, solicit and obtain bids, analyze the bids and award contracts. For subcontracts below established thresholds, FERMCO is permitted to make award without advance approval by DOE. DOE reports that the protested award was below FERMCO's approval threshold and, in fact, FERMCO did not receive advance approval from DOE. Under the circumstances, we conclude that this subcontract award was not "by or for the

¹The statement of work for FERMCO's (prime) contract states that, in addition to remediation, FERMCO is responsible for "conduct of the base activities," including such tasks as waste management, maintenance of real property, utilities, training, occupational medicine, emergency preparedness, laboratory services, security, transportation, food and laundry services and fire protection. DOE reports that the base activities for which FERMCO is responsible will be phased out over time and that for fiscal year 1994, base activities will amount to approximately 15 percent of contract costs.

government," and is outside our jurisdiction.² See
American Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD
¶ 503.

The protest is dismissed.

Robert P. Murphy
for Robert P. Murphy
Acting General Counsel

²Hydro-Pure argues that the subcontract was issued for the government because the solicitation issued by FERMCO identified Fernald as a government-owned facility which FERMCO managed, operated, and maintained. We point out, however, that this language was in the solicitation for the subcontract and did not define the relationship between FERMCO and DOE as established by the prime contract. Our review of the prime contract demonstrates that, as discussed above, FERMCO's role is to clean up the Fernald site, not to operate it.