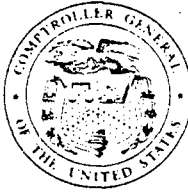


DECISION

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

u0841

FILE: B-186146

DATE: May 11, 1976

98961

MATTER OF: Abbott Power Corporation

DIGEST:

1. Complaint by subcontractor of ERDA prime contractor against ERDA's action in failing to approve drawings of subcontractor's equipment and not allowing contract performance to proceed because it found contract specifications were not met is matter of contract administration not appropriate for consideration by GAO.
2. Protest by subcontractor against prime contract specifications is untimely under section 20.2(b)(1) of Bid Protest Procedures because protest of improprieties apparent prior to bid opening was not filed prior to bid opening.

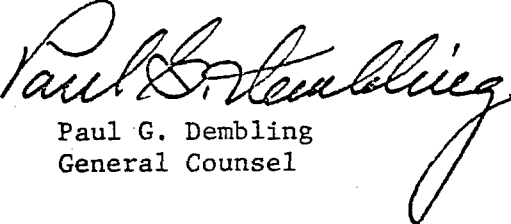
Abbott Power Corporation (Abbott) protests the actions taken by the Energy Research and Development Administration (ERDA) in connection with ERDA's fixed price prime contract E(29-1)-2268 with Overhead Electric Company (Overhead) for electrical utility systems upgrading for the CMR Building, Los Alamos, New Mexico. Overhead had subcontracted with Abbott to supply power center substations, 15 kilovolt switchgear and 480 Y/277 volt switchboards which were required under the prime contract. ERDA had no authority to approve or disapprove Overhead's subcontractor selection.

Abbott has protested ERDA's refusal to approve the drawings for Abbott's proposed equipment, which were submitted by Overhead for approval under the contract, or to authorize Overhead and Abbott to proceed with production and installation of the equipment, even though the date for contract completion has passed. Abbott also alleges that the prime contract specifications are overly restrictive and impossible for Abbott to comply with, and that they were intended to assure that a "major" manufacturer would supply the subcontract equipment. Abbott further alleges that ERDA's conduct during the contract demonstrates this preference for "major" manufacturers.

The gravamen of Abbott's "protest" is the Government's refusal to allow Overhead to proceed with the contract because ERDA has determined that Overhead has not complied with the prime contract specifications concerning the subcontract equipment. We understand that ERDA is considering a termination for default of Overhead's contract because of its failure to timely perform the contract. Although Abbott has argued that ERDA's actions actually go to the selection of the subcontractor, we believe the essence of the complaint clearly concerns the contractor's compliance (or lack of compliance) with the contract requirements and any contractor or subcontractor excuses for contract nonperformance. These are matters of contract administration not appropriate for consideration by our Office. See B-177781, May 29, 1973; Edward E. Davis Contracting, Incorporated, B-179719; B-179720, January 29, 1974, 74-1 CPD 37; Colmac Industries, Incorporated, B-182046, August 30, 1974, 74-2 CPD 136; Associated Electronics, Inc., B-184085, November 3, 1975, 75-2 CPD 272.

Abbott's protest insofar as it concerns the alleged restrictiveness and impossibility of the prime contract specifications is ordinarily the kind of subcontract protest our Office would consider on the merits, since the Government is responsible for the specifications. See California Microwave, Inc., 54 Comp. Gen. 231 (1974), 74-2 CPD 181; Optimum Systems, Inc. (1975), 54 Comp. Gen. 767 (1975), 75-1 CPD 166; Ludell Manufacturing Company, B-184154, March 8, 1976, 76-1 CPD 159. However, Abbott's protest against the specifications is clearly untimely under section 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), because the protest of improprieties apparent prior to bid opening was not filed in our Office prior to the opening of bids for the prime contract. See Unitec, Inc., B-183343, May 27, 1975, 75-1 CPD 315; Midwest Tele Communications Corporation, B-184323, February 9, 1976, 76-1 CPD 81.

In view of the foregoing, Abbott's protest will not be considered on the merits.


Paul G. Dembling
General Counsel