

DECISION



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

*M. Golden
Proc I*

8073

FILE: B-191577

DATE: October 23, 1978

**MATTER OF: RCA Global Communications, Inc.--
Reconsideration**

DIGEST:

Allegation that agency's acceptance of offered but as of yet unapproved rate for telecommunications service would contravene agency's procedures provides no basis for GAO to take legal exception since procedures are policy statements not having force and effect of law and compliance therewith is responsibility of agency head.

RCA Global Communications, Inc. (RCAG) requests reconsideration of our decision B-191577, August 29, 1978, 78-2 CPD 150, in which we denied RCAG's protest in connection with a procurement for leased circuits between Guam and the Philippines by the Defense Commercial Communications Office (DECCO), Defense Communications Agency.

DECCO accepted ITT Worldcom's proposal based on a "guaranteed" Philippine terminal rate of \$5,725 per month, a rate which has not been approved by the Philippine Board of Communications (BOC). RCA Globcom had also quoted a rate of \$5,725, but did not guarantee it because the Board had not yet approved that rate. DECCO evaluated RCAG's proposal on the basis of the existing authorized rate of \$6,000, and found ITT Worldcom to be the low offeror. RCAG protested that the evaluation and award to ITT Worldcom (ITTW) was improper because the terminal rate of \$6,000 was the only lawful rate that could be charged. We held that regulatory body approval of the quoted rate was not a solicitation requirement, that ITTW's proposal was responsive to the solicitation, and that the award was proper.

In requesting reconsideration RCAG argues that ITTW could not "guarantee" its proposed rate when the rate is subject to regulatory body jurisdiction and

that DECCO could not accept the "guarantee" without violating provisions of the Defense Commercial Communication Procurement Procedures (DCCPP) (DCA Circular 350-135-1, February 1977). Those provisions state that the regulations and decisions of regulatory bodies will be complied with. Thus, RCAG reasons that should the BOC not approve ITTW's rate, DECCO's insistence that ITTW maintain the lower rate would require DECCO to "abrogate" its own procurement procedures.

As indicated in the original decision, an offeror could, as a matter of contractual commitment, "guarantee" a particular rate. Whether the regulatory body concerned would approve the rate is not an immediate concern of the contracting officer, but is a matter for resolution by the offeror and the regulatory agency. As the contracting officer points out, the "guarantee", in effect, means that:

"ITTW will not bill a higher rate (and DECCO will not pay a higher rate) until there is a mutually agreed upon change in the rate. If the rate must be increased as a result of a BOC order, the increase would be agreed to by DECCO only prospectively."

With regard to the DCCPP it appears to be only an internal agency policy and procedures document which unlike the Defense Acquisition Regulation, does not have the force and effect of law and provides no basis for this Office to take legal exception to DECCO's actions.


As we said in General DataComm, B-182556, April 9, 1975, 75-1 CPD 218, which involved an earlier version of the DCCPP entitled "Defense Commercial Communications Leasing Procedures," the Circular is only a policy statement and:

"* * * matters of Executive policy do not establish legal rights and responsibilities and are not within the decision functions of our Office. Adherence to, or departures from, departmental policies are solely the concern of the head of the department."

B-191577

3

The prior decision is affirmed.


Deputy Comptroller General
of the United States