

DECISION



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

31217

FILE: B-218121

DATE: May 16, 1985

MATTER OF: Rosemount, Inc.

DIGEST:

1. Agency request that protest be dismissed because it failed to set forth a clear statement of the grounds for protest and also because protester failed to furnish a copy of the protest to the contracting agency within 1 day of its filing with GAO is denied. Agency was aware and did not promptly object to the protester's failure to furnish a copy of the submission filed with GAO.
2. Protest alleging that solicitation cannot be satisfied by a common bus system is denied because the record supports the determination by the contracting activity (a prime contractor managing government-owned facility) that the RFP's technical requirements were met.

Beckman Industrial Corporation, an affiliate of Rosemount, Inc., protests the award of a subcontract to Bailey Controls Corporation under request for proposals (RFP) No. 204439 issued by Westinghouse Idaho Nuclear Company (WINCO). WINCO is the managing and operating contractor for the Department of Energy (DOE) at the Idaho National Engineering Laboratory. The solicitation was for the purchase of a distributed system to control the Rare Gas Plant at the Idaho Chemical Processing Plant. Beckman, through Rosemount, argues that Bailey's system cannot meet the RFP's technical requirements and that Bailey's proposal should have been rejected.

We deny the protest.

The record discloses that best and final offers were requested by December 14, 1984. On December 19,

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WINCO received a telex from Beckman which stated that there was a "vast misunderstanding among certain vendors" regarding paragraph 2.2.4.10 of the engineering specifications for the system.

According to Beckman, it interpreted paragraph 2.2.4.10 as precluding offerors from proposing a common (single) bus system. Beckman proposed a multiple, redundant bus system. Concerned that others had not proposed redundant systems, Beckman requested in its December 19 telex that WINCO clarify the requirement and asserted that it could reduce its cost considerably if its interpretation of the specifications was incorrect.

WINCO did not respond to Beckman's telex, but rather, WINCO proceeded with the evaluation of best and final offers. A Technical Review Committee designated by WINCO treated the common bus system, which Bailey had proposed, as technically acceptable. Bailey was evaluated as the low, responsive, responsible offeror and was awarded the contract on December 28, 1984. Beckman protested the action to DOE and by letter dated January 18, 1985, DOE denied the protest. Subsequently, this protest was filed with our Office.

Initially, we point out that we do not review subcontract awards by government prime contractors, except where the award of the subcontract is by or for the government. 4 C.F.R. § 21.3(f)(10) (1985). Here, the prime contractor is managing a government-owned facility and is thus acting "for" the government. See Basic Technology, Inc., B-214489, July 13, 1984, 84-2 CPD ¶ 45. In this type of case, we review the subcontract procurement to determine if it was consistent with and achieved the policy objectives of the federal statutes and regulations that apply to direct procurements by federal agencies. Piasecki Aircraft Corp., B-190178, July 6, 1978, 78-2 CPD ¶ 10.

According to DOE, Beckman's protest should be dismissed for failure to comply with the procedural requirements in section 21.1 of our Bid Protest Regulations (4 C.F.R. Part 21 (1985)).

DOE complains that the protest was ambiguous, misleading and failed to set forth a detailed statement of the grounds for protest as required by our regulations. Also, DOE complains that Beckman failed to furnish a copy of the protest to the agency within 1 day of its filing with GAO.

Section 21.1 of our regulation requires that protests clearly state legally sufficient grounds of protest and that a copy of the protest be furnished to the contracting activity within one day of the date it is filed at GAO. Section 21.1(f) provides that failure to comply with these procedural requirements may be cause for dismissal.

However, dismissal is not required in all circumstances. Beckman pursued its protest initially with WINCO and, although DOE may not have timely received a copy of the submission filed with our Office, DOE had knowledge of the grounds that formed the basis for Beckman's protest with WINCO. Furthermore, DOE filed its protest report in a timely manner under our regulations and at no time prior to that date did DOE object to its failure to receive a timely copy of the protest. Therefore, we will consider the protest on its merits.

With respect to the merits of the protest, Beckman contends that Bailey's proposal should have been rejected. Beckman also contends that its telex to WINCO was a request for an interpretation of the specifications and that WINCO should have reopened discussions to clear up a misunderstanding Beckman presumably had just discovered.

On the other hand, DOE argues that, contrary to Beckman's assertions, the specifications do not prohibit offerors from proposing a common bus system and that such a system can be designed to meet the technical requirements of the RFP. DOE argues that Beckman has misinterpreted the engineering specifications and that applying the specifications properly, Bailey's proposal was acceptable.

The specification principally in dispute requires that "bus lockup shall not cause more than one loop failure." As used here, the term "bus" refers to one or more wires that serve as communication paths. These paths form a network connecting control system components, including components that measure performance or directly control equipment in the plant, components that process or display data, such as CRTs, and components such as control panels from which the plant is operated. Each combination of these components that performs a control system function comprises a "loop." The components are connected to the bus electronically through "drivers." Some systems use traffic directors to control communication on the bus.

Beckman says that the term "lockup" as used in paragraph 2.2.4.10 refers to any failure of communications when a bus has become "jammed" or communications have ceased between two components due to a hardware or software failure. Beckman insists that no common bus system can meet this requirement because driver failure will cause multiple loop failures.

We agree, however, with DOE that Beckman has incorrectly defined the "bus lockup" requirement. Beckman's definition would include not only situations where, due to inherent design, the bus can become electronically locked, but other possible electrical or mechanical failure in, for example, a driver. As DOE explains, the intent of paragraph 2.2.4.10 was to address a narrower problem that arises because some systems use equipment designed to serve as traffic directors to avoid contention between communication devices when more than one device attempts to communicate over the bus simultaneously. Improper operation of the traffic director can cause such buses to lock electronically, preventing communication between equipment that has not failed. DOE has submitted the opinions of two independent firms experienced in this field, which support DOE's understanding of this narrower usage of the term "lockup."

Since we agree with DOE's interpretation of paragraph 2.2.4.10, it follows that a common bus system incorporating a design that does not rely on traffic directors, and therefore is not subject to lockup, would satisfy the RFP requirement. The record shows that Bailey proposed a system that does not use traffic directors as that term has been understood in the communications industry, but rather, relies on software design to avoid communications contention problems. The RFP did not require Bailey to deliver, nor did WINCO assume any obligation to evaluate, engineering level drawings and software source code in order to evaluate the acceptability of Bailey's networking approach. In the circumstances, we see no basis to question WINCO's judgment that Bailey's approach was acceptable.

In reaching our decision, we have considered Beckman's separate arguments concerning the reliability requirements set out in paragraph 2.1.2. It appears, however, that Beckman has also misconstrued this portion of the solicitation. Beckman has presented calculations that it says support its conclusion that Bailey's system if installed at the Idaho Chemical Processing Plant cannot achieve a reliability of 99.90 percent. In explaining these calculations, Beckman interprets the paragraph "single loop integrity" provisions as requiring that "only one loop can fail at a time" (emphasis added by Beckman). Beckman states that its calculations are based on an 8-hour service time because Idaho Falls is remotely located. In other words, Beckman assumes that only one of the many system loops can be out of service at any one time, and that 8 hours are required to fix a single loop failure. On its face, however, paragraph 2.1.2 defines the reliability that a single loop must meet as 99.9 percent. The effect of Beckman's interpretation is to require that the loops collectively assure a 99.9 percent integrity. Moreover, the paragraph states explicitly that a 2-hour service time is to be assumed in calculating reliability, not 8 hours.

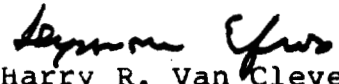
A protester challenging an agency's determination bears the burden of affirmatively proving its allegations. For the reasons given, we conclude that Beckman has not met its burden of proof.

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Since Beckman has not demonstrated that WINCO's evaluation of Bailey's proposal was improper or that it was itself reasonably misled concerning WINCO's requirement, Beckman's allegation that WINCO should have reopened negotiations is without merit. Our Office has held that after negotiations and best and final offers, negotiations generally should not be reopened unless it clearly within the best interests of the government. Crown Point Coachworks and R&D Composite Structures; North America Racing Co., B-208694, B-208694.2, Sept. 29, 1983, 83-2 CPD ¶ 386.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel