



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Yard USA, Inc.

File: B-232326

Date: September 1, 1988

DIGEST

1. General Accounting Office (GAO) will not review a proposed award by a second-tier subcontractor because the award is not by or for the government as required for GAO to review subcontractor protests.
2. A protest allegation that an agency improperly approved a value engineering change proposal is not for review by General Accounting Office since allegation involves a matter of contract administration.

DECISION

Yard USA, Inc. protests the Navy's approval of a value engineering change proposal (VECP) under Navy contract No. N00024-87-C-2002 and the proposed contract award by Jered Brown Brothers to Sperry Marine Division of Newport News Shipbuilding and Drydock Company for a steering control subsystem on the Navy's AOE-6 Fast Combat Support Ship. We dismiss the protest without requesting a report from the Navy, since it is clear from the material furnished by Yard that the protest is not for our consideration. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1988).

According to the protest, in December 1986, the Navy awarded a contract to National Steel and Shipbuilding Company (NASSCO) for the construction of the lead ship of the Navy's AOE-6 Class of Fast Combat Support Ships. The protester indicates that, with Navy approval, NASSCO awarded a subcontract to Jered Brown to supply the steering system and that Jered Brown, again with Navy approval, awarded a subcontract to Yard for a steering control subsystem. That subsystem was to include an aft steering unit with a Navy furnished AN/UYK-44 computer, which Yard says was mandated by Navy specifications.

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The Navy, however, approved a NASSCO VECP which calls for elimination of the steering control subsystem proposed by Yard and substitution of a Sperry subsystem which, according to the protester, is to be acquired under a sole-source contract with Sperry. Yard says that although it had begun performing its subcontract with Jered Brown, as a result of the VECP, on August 10, 1988, Jered Brown ordered Yard to stop work on the subcontract and indicated that the subcontract would be terminated.

Yard contends that a sole-source award by Jered Brown to Sperry cannot be justified since the Navy owns the data rights to the subsystem proposed by Sperry and numerous firms, including Yard, could manufacture the same subsystem. Further, Yard maintains that the Navy violated its internal regulations when it approved the NASSCO VECP and that approval was not justified on the basis of either cost or technical merit. Yard requests that this Office direct the Navy to rescind its approval of the VECP or direct that any subcontract for the steering control subsystem be awarded competitively.

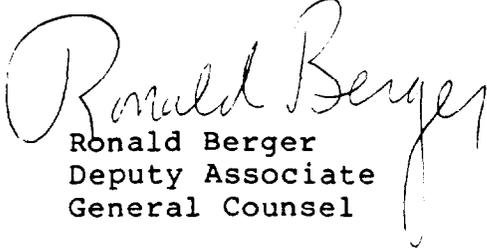
Under our Bid Protest Regulations, we will not review subcontract awards or proposed awards except where the award of the subcontract is by or for the government. 4 C.F.R. § 21.3(m)(10). Here, Yard contends that since the Navy had the right to approve the subcontract award for the steering system and since the steering control subsystem will be used by the Navy, Yard's contract with Jered Brown and the proposed award to Sperry should be considered as by or for the government and should be reviewed by our Office.

Basically, a subcontract is considered to be by or for the government when the prime contractor principally provides large scale management services to the government and, as a result, generally acts as the government's agent with an ongoing purchasing responsibility. In effect, the prime contractor is a middleman or conduit between the government and the subcontractor. Techniarts Engineering, B-230263, Mar. 30, 1988, 88-1 CPD ¶ 323. Although, we do not believe that this case meets the above-cited test, even if NASSCO's subcontract award to Jered Brown were considered to be by or for the government, we would still not consider this protest because it relates to the second tier subcontract awarded by Jered Brown. Generally, a government prime contractor's subcontractor is not a purchasing agent for the government and therefore its procurements are not by or for the government. See Sygnatron Protection Systems, Inc., B-225441.2, Nov. 19, 1986, 86-2 CPD ¶ 593. Since Jered Brown is only a subcontractor for NASSCO, the Navy's prime

contractor, we will not review a procurement conducted by Jered Brown.

Moreover, a protest concerning an agency's acceptance of a VECP under a contract is not for resolution under our regulations since it involves contract administration. 4 C.F.R. § 21.3(m)(1); Symbolic Displays, Inc., B-182847, May 6, 1975, 75-1 CPD ¶ 278. Accordingly, we also will not consider the allegations concerning the Navy's approval of the VECP.

The protest is dismissed.


Ronald Berger
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General Counsel