



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Paxman Diesels, Ltd.

File: B-238785

Date: March 13, 1990

James H. Falk, Sr., Esq., McGovern, Noel, Falk, Pannone, Procaccini & O'Leary, Ltd., for the protester. Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office will not consider a bid protest by a subcontractor concerning the propriety of an agency's acceptance of a specification change proposed by the prime contractor where the government's involvement in the procurement is not so pervasive that the prime contractor should be considered a mere conduit for a government contract award.

DECISION

Paxman Diesels, Ltd., protests alleged improprieties by the Department of the Navy under solicitation No. N00024-87-R-2029(Q), for island class patrol vessels. Paxman asserts that the Navy improperly directed a cardinal change to the contract awarded under this solicitation by granting a value engineering change proposal (VECP), submitted by the awardee, Bollinger Machine Shop and Shipyard, Inc., which will allow Bollinger to change the propulsion systems (engines) for 12 option vessels under the contract. Paxman protests that the VECP resulted from improper negotiations, and that the acceptance of the VECP will result in a breach of the Navy's contract with Bollinger which, in turn, will precipitate a breach of Bollinger's subcontract with Paxman, which has been Bollinger's engine supplier for the vessels. Paxman contends that a change of this magnitude must be competed after termination of the present contract.

We dismiss the protest since it is a subcontractor protest which is not for consideration under our Bid Protest Regulations. 4 C.F.R. § 21.3(m)(10) (1989).

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Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551 et seq. (Supp. IV 1986), our Office has jurisdiction to decide protests involving contract solicitations and awards by federal agencies. We have interpreted this provision as authorizing us to decide protests of sub-contract solicitations and awards only when the subcontract is "by or for the government." 4 C.F.R. § 21.3(m)(10).

Generally, a subcontract is considered to be "by or for the government" where the prime contractor principally provides large-scale management services to the government and, as a result, has ongoing purchasing responsibility. In effect, the prime contractor acts as a middleman or a conduit between the government and the subcontractor. American Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD ¶ 503. Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse Elec. Corp., B-227091, Aug. 10, 1987, 87-2 CPD ¶ 145, otherwise provides large-scale management services, Union Natural Gas Co., B-225607, Jan. 9, 1987, 87-1 CPD ¶ 44, or functions primarily to handle the administrative procedures of subcontracting with vendors actually selected by the agency. University of Mich., et al., 66 Comp. Gen. 538 (1987), 87-1 CPD ¶ 643. Except in these limited circumstances in which the prime contractor is acting as the government's agent, a subcontract awarded by a government contractor in the course of performing a prime contract generally is not considered "by or for the government." Barshfield, Inc., B-235575, July 11, 1989, 89-2 CPD ¶ 33.

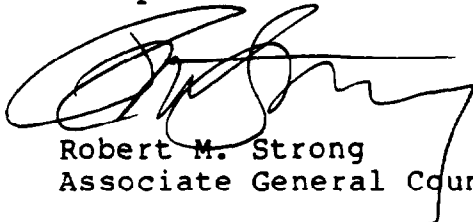
Paxman's protest relates to the anticipated award of the engine subcontract by Bollinger. Bollinger's contract to supply the vessels in question to the Navy, which was awarded in 1984, specified Paxman engines. The VECP in question permits the use of Caterpillar engines for 12 option vessels, and was approved by the Navy after it determined that the proposed Caterpillar engines satisfied the applicable requirements under Mil-E-24455. Paxman asserts that the Caterpillar engine is inferior to Paxman's engine, and will not satisfy the engine horsepower requirements under the solicitation.

As indicated above, our Office considers a limited category of subcontractor protests on the basis that the prime is acting "by or for the government," essentially only in cases where the prime contractor acts as an agent of the government with ongoing purchasing responsibility and awards contracts on behalf of the government. Here, Bollinger has no such responsibilities, rather, it has a contract to

supply the government with a number of vessels. Accordingly, we cannot find that the nature of Bollinger's contract with the Navy provides the kinds of services which would indicate that the subcontract procurement in question is "by or for the government." Perkin-Elmer Corp., Metco Div., B-237076, Dec. 28, 1989, 89-2 CPD ¶ 604.

Paxman argues that Bollinger is nonetheless acting as a conduit for the government's ultimate award. However, even where there is active government involvement in the subcontracting process, our Office does not consider such involvement a basis for invoking jurisdiction where the record does not support the view that the agency effectively "took over" the procurement from the prime contractor. Id. Even if, as Paxman asserts, the Navy's action amounted to effectively directing the subcontractor's selection, this would not, by itself, establish that the prime contractor is acting as the government's agent for the procurement, the only basis on which we would review this matter. Toxco, Inc., 68 Comp. Gen. 638 (1989), 89-2 CPD ¶ 170. Here, the prime contractor submitted a VECP; the Navy's determination that the proposed Caterpillar engine satisfies its specifications, and its acceptance of Bollinger's VECP, does not make the government's involvement in the subcontractor selection so pervasive that the contractor is a mere conduit for the government.

The protest is dismissed.



Robert M. Strong
Associate General Counsel