

Lieberman



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: MTU of North America, Inc.

File: B-238785.2

Date: March 19, 1990

John R. Bagileo, Esq., Klein & Bagileo, for the protester. Marcus B. Slater, Jr., Esq., Fort & Schlefer, for Bollinger Machine Shop and Shipyard, Inc., an interested party. Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. 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.
2. Protest allegation that agency improperly approved a value engineering change proposal is a matter of contract administration which is not for review by the General Accounting Office.

DECISION

MTU of North America, Inc., protests a contract modification approved by the Navy under contract No. N00024-87-C-2029, for Island class patrol vessels, which was awarded to Bollinger Machine Shop and Shipyard, Inc. MTU asserts that the Navy improperly approved a value engineering change proposal (VECP), submitted by Bollinger, which permits Bollinger to change the propulsion systems (engines) for vessels supplied under the contract from Paxman engines to Caterpillar engines. MTU asserts that it produces an engine which has been qualified by the Navy and which provides a better alternative to power the patrol vessels than does the Caterpillar engine. MTU protests that the engine change must be accomplished using full and open competition.

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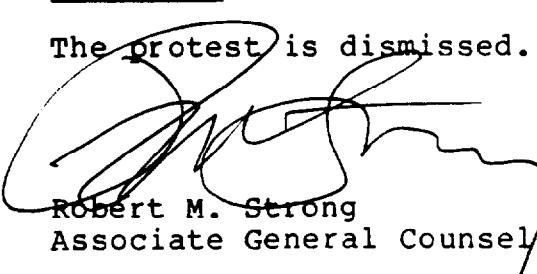
We dismiss the protest since it is a subcontractor protest which is not for consideration under our Bid Protest Regulations. 4 C.F.R. § 21.3(m)(10) (1989).

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 subcontract solicitations and awards only when the subcontract is "by or for the government." 4 C.F.R. § 21.3(m)(10).

We have just considered and dismissed a similar protest by Paxman Diesels, Ltd., Bollinger's prior engine supplier, regarding this same VECP acceptance. Paxman Diesels, Ltd., B-238785, Mar. 13, 1990, 90-1 CPD ¶ _____. In that decision, we pointed out that Bollinger's contract is only to supply the Navy with a number of vessels, not to provide large scale management services to the government, thereby acting as an agent of the government with ongoing purchasing responsibility. Therefore, we found that Bollinger did not provide the kinds of services which would indicate that the subcontractor procurement at issue is "by or for the government." In addition, we concluded that the Navy's qualification of the Caterpillar engine and its acceptance of the prime contractor's VECP substituting the Caterpillar engine did not make the government's involvement in the subcontractor selection so pervasive that the prime contractor was a mere conduit for the government. Id. Accordingly, we determined that the engine purchase was not taken over by the Navy in a manner which made it "by or for the government," the only basis on which our Office would review a subcontractor protest. The identical considerations obtain here.

Moreover, we note that a protest concerning an agency's acceptance of a VECP under a contract is not for resolution under our Bid Protest Regulations since it involves a matter of contract administration. 4 C.F.R. § 21.3(m)(1); Yard USA, Inc., B-232326, Sept. 1, 1988, 88-2 CPD ¶ 207.

The protest is dismissed.


Robert M. Strong
Associate General Counsel