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FILE: B-185242

DATE: June 16, 1976

MATTER OF: The Ohio State University Research Foundation

DIGEST:

Record presents no reason to conclude that agency's decision to terminate contract due to competitive deficiencies constituted an abuse of discretion or bad faith.

This matter concerns the propriety of an agency's decision to terminate a contract for convenience, which was made in response to a protest to this Office. That protest was filed by Geophysical Survey Systems, Incorporated (GSSI), against the award of a contract to the Ohio State University Research Foundation by the Energy Research and Development Administration (ERDA). The contract was for the design, development, fabrication and testing of a prototype obstacle detecting and mapping device.

As the basis for its protest, GSSI contended that ERDA did not follow proper procedures in the evaluation and award process, including an alleged failure to consider GSSI's lower price and to perform a proper technical evaluation. By letter of January 22, 1976, ERDA advised this Office that its review of the process leading to award to Ohio State revealed competitive deficiencies other than those matters raised by GSSI. ERDA specifically found that the technical evaluator used a "somewhat different set of technical criteria than were set forth in the solicitation and the contract negotiator failed to establish a common cut-off for the submission of best and final offers." In view of these deficiencies ERDA considered corrective action to be appropriate, and accordingly directed termination of Ohio State's contract for the convenience of the Government, effective January 14, 1976. As a result of this action, GSSI withdrew its protest.

By letter of February 13, 1976, Ohio State protested ERDA's termination action to this Office on the grounds that it was arbitrary and in bad faith. Ohio State has advanced a number of grounds for its protest (such as it was evaluated as the best qualified offeror, its work under the contract has been satisfactory, and ERDA has taken the necessary action to correct its internal procedures), but has not disputed ERDA's findings regarding deficiencies in the award selection process.

Generally, the resolution of whether a contract should be terminated for the convenience of the Government is a matter of contract administration and, therefore, beyond the authority of our Office. Swiss Controls, Inc., B-185861, March 1, 1976, 76-1 CPD 141. While we have reviewed contract terminations in certain cases where the termination was effected because the agency considered the award procedure deficient, in those situations the protester alleged that the award procedure in fact was proper. Electronic Associates, Inc., B-184412, February 10, 1976, 76-1 CPD 83; Service Industries, Inc., et al., 55 Comp. Gen. 502 (1975), 75-2 CPD 345. In this instance, the protester, while alleging that the termination of its contract was not in the Government's best interests, has failed to rebut the substantial competitive deficiencies which ERDA claims occurred in this procurement. Since the protester has not carried its burden of affirmatively alleging and proving its case, Reliable Maintenance Service, Inc., B-185103, May 24, 1976, 76-1 CPD _____, the record presents no reason to conclude that ERDA's actions constituted an abuse of discretion or bad faith.

Protest denied.


Deputy Comptroller General
of the United States