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**DECISION**



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

FILE: B-199930.2

DATE: July 29, 1981

MATTER OF: American Nucleonics Corporation

**DIGEST:**

1. Government is not estopped to deny contract with protester where record lacks clear evidence of any overt act by Government which might reasonably be construed as inducement to perform prior to award of contract.
2. Allegation, without supporting evidence, of arbitrariness of cancellation of solicitation is not sufficient to meet protester's burden of proof.

American Nucleonics Corporation (ANC) protests the cancellation by the Air Force of a sole-source request for quotations (RFQ) for antennas on which ANC had already initiated production. ANC contends both that the cancellation was improper and that the course of conduct between ANC and the Air Force gave rise to a contract for the purchase of these antennas and that the Air Force therefore could not cancel the RFQ without incurring liability for termination charges. The protest is without merit.

ANC alleges that on May 19, 1980, Air Force personnel made a telephone call to ANC requesting a firm fixed-price quotation for 4,643 antennas to which ANC responded 3 days later with a letter containing both the requested quotation and a statement that ANC would need almost immediate authority to proceed if it were to meet the Air Force's required delivery schedule. The Air Force denies that any of its contracting personnel contacted ANC and states that it never received any such letter. On June 5, 1980, the Air Force sent a telegraphic request to ANC for "a quotation on the following urgent requirement"

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which repeated the requirement and delivery schedule described in ANC's May 22 quotation. ANC submitted its proposal on June 6, 1980. The RFQ closed on June 20. Another firm, American Electronic Laboratories, Inc. (AEL), submitted an unsolicited proposal on June 18 which was rejected for technical reasons. On August 11, AEL protested the rejection of its proposal. The Air Force canceled the RFQ on August 22, 1980. (The cancellation of the solicitation mooted AEL's protest--see American Electronic Laboratories, Inc., B-199930, October 16, 1980, 80-2 CPD 289.) The Air Force justified cancellation of the RFQ, an interim purchase to fill a gap in antenna requirements until deliveries of a newer model antenna could start in July 1981, on the basis that slippage in the F4D aircraft modification program for which the antennas would be used had eliminated the requirement for an interim purchase. ANC contends that the Air Force canceled this requirement as a result of AEL's protest.

Before the RFQ was canceled, ANC began production of the first 2,000 antennas needed for delivery in September. As part of this effort, ANC states it contacted the Air Force and was given contract No. F04606-80-G-0062-RJ01 to be put on the identifying tags attached to each antenna. The Air Force denies that any of its personnel gave ANC a contract number. The Air Force explains that the likely contract number was easily ascertainable from the RFQ which stated: "anticipate any award subsequent to quote will be under [Basic Ordering Agreement] F04606-80-G-0062." The Air Force indicates that on both this and prior acquisitions it has warned ANC that ANC would be proceeding at its own risk if it began production prior to receiving a signed contract.

ANC, in effect, contends that the Air Force led ANC to believe that it would be awarded a contract for antennas, that ANC performed in response to these actions, and that the Air Force therefore is estopped to deny the existence of a contract with ANC. We find the evidence to support this proposition lacking.

The Government may be estopped to deny the existence of a contract with a bidder or offeror where the following four elements are all present:

- (1) the Government knows the facts;
- (2) the Government intends that its conduct shall be acted on or the Government so acts that the bidder or offeror has a right to believe that the Government's conduct is so intended;
- (3) the bidder or offeror is ignorant of the true facts; and
- (4) the bidder or offeror relies on the Government's conduct to his injury.  
(See Fowler's Refrigeration and Appliance, Inc., B-201389, March 25, 1981, 81-1 CPD 223.)

We have found an estoppel where the record provided clear and convincing evidence of all four of these elements. See System Development Corporation, B-191195, August 31, 1978, 78-2 CPD 159. Conversely, we have denied claims of estoppel where such evidence is lacking. See Fowler's Refrigeration and Appliance, Inc., supra; A & C Building and Industrial Maintenance Corporation, B-193047, April 13, 1979, 79-1 CPD 265.

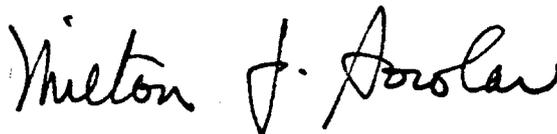
We find no clear evidence here of any overt action by the Government which might reasonably be construed as an inducement to ANC to initiate production prior to the award of a contract. Certainly, we find unconvincing ANC's apparent reliance on the "urgency" of the requirement in the face of the clearly conditional "anticipate any award subsequent to quote \* \* \*" language of the RFQ, to which we referred above. We also find largely irrelevant both ANC's assertions concerning the pre-RFQ telephone calls concerning this requirement and the suggestion that the Air Force provided ANC with the contract number. In the first case, even if ANC's quotation were solicited by telephone on May 19, an event which the Air Force disputes, we do not believe that an oral request for quotation justifies initiating performance. Furthermore, we would regard any such inference negated by the June 5 RFQ which would be clearly inconsistent with such an interpretation. At worst, we view the June 5 RFQ as merely formalizing

what might have occurred previously informally. And even if the Air Force did supply ANC with a contract number, this event did not occur until, by ANC's own admission, it was "finishing up production." We cannot consider a postproduction event to constitute an inducement to performance. Cf. Fink Sanitary Service, Inc., 53 Comp. Gen. 502 (1974), 74-1 CPD 36. We find no evidence of any other preproduction act on which ANC might have relied as approval to begin performance. In these circumstances, we find the second element of estoppel lacking and must deny ANC's claim.

We also find no merit in ANC's protest against the Air Force's cancellation of the solicitation. The Air Force has offered a reasonable explanation--elimination of the interim requirement--for its cancellation of the solicitation. While ANC contests this determination, it has provided no evidence in support of its allegations of arbitrariness.

The protester has the burden of affirmatively proving its case. Collins Telecommunications Products Division, B-199539, March 26, 1981, 81-1 CPD 225; The Holloway Company, B-197557, August 18, 1980, 80-2 CPD 128. Unsupported allegations are not sufficient evidence. Courier - Citizen Company, B-192899, May 9, 1979, 79-1 CPD 323.

ANC's protest is denied.



Acting Comptroller General  
of the United States