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Lieberman

DECISION

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

FILE: B-206943 DATE: September 24, 1982

MATTER OF: Chrysler Corporation

DIGEST:

1. Protest that cancellation of solicitation for subcompact vehicles would result in violation by General Services Administration of Executive order regarding fuel economy requirements for Government vehicles acquired during 1982 fiscal year is moot where subsequent Executive order has modified the requirement.

2. An issuing agency properly may cancel a solicitation after bid opening regardless of when the information justifying cancellation first surfaces.

3. Where an agency determines after bid opening that already available vehicles may be used to satisfy Government needs and that such use in conjunction with expenditure of funds to exercise certain lease-purchase options would result in substantial cost savings compared to expenditure for new subcompact vehicles, partial cancellation of solicitation for new vehicles is proper.

4. Agency determination to cancel requirement for subcompact vehicles rather than requirement for compact vehicles is reasonable where agency has determined that compact vehicles permit utilization by more passengers and provide greater luggage space, which features are considered significant in maintaining the versatility of a motor pool fleet.

5. A protester is not entitled to bid preparation costs where the agency makes a reasonable determination to cancel a solicitation, even if the information forming the basis for the decision to cancel may have been available to the agency prior to the issuance of the solicitation, where there is no indication that the agency acted in bad faith.

Chrysler Corporation (Chrysler) protests the determination by the General Services Administration (GSA) to cancel, after bid opening, the requirement for 1,176 subcompact vehicles intended for use in the Interagency Motor Pool System (IMPS), on which Chrysler was the low bidder under invitation for bids (IFB) No. TCPL-P5-27400-A-1-18-82. GSA has made award of contracts for more than 3,000 other vehicles under this IFB, of which award for 1,451 compact vehicles at a price of $8.4 million was made to Chrysler.

Chrysler argues that GSA improperly canceled the requirement for the subcompact vehicles because there was no compelling reason to do so. Chrysler alleges that GSA knew all the factors which formed the stated basis for cancellation prior to the issuance of the solicitation and that GSA simply decided after bid opening to fill the same needs by acquiring the same number of vehicles, but by substituting other vehicles for the solicited subcompacts--without adequate justification. Chrysler also argues that the decision to buy new compacts under the solicitation and cancel only the subcompacts violates the "minimum needs rule" and GSA's mandate under Executive Order No. 12003 to meet certain Government fleet fuel ecoromy requirements. Finally, Chrysler has claimed bid preparation costs.

We deny the protest and claim for bid preparation costs.

GSA issued the solicitation on November 20, 1981, and bids were opened on January 18, 1982. Award was postponed until March 26, 1982, in order to enable GSA to review the IMPS requirements, for which a majority of the vehicles under the IFB were intended to be used. Based on this review, GSA determined that its needs had changed and, as a result, elected to award the vehicles other than the subcompacts and cancel the requirement for the subcompacts.

In reaching this determination, GSA reviewed the Government's needs in general and concluded that it would be cost effective to (1) continue to use certain older vehicles which were to be replaced and (2) to use the funds intended for purchase of the new subcompacts to instead buy 5,000 1980 compact vehicles currently operated by the Government under 4-year leases with purchase options. GSA determined that the net effect of these changes would be a cost savings of approximately $3.4 million over 1 year.

With respect to Chrysler's allegation that GSA's decision will result in violation of Executive Order No. 12003, which mandated that GSA insure that passenger automobiles acquired by all executive agencies during the 1982 fiscal year achieve a fleet average fuel economy standard of 28 miles per gallon, four miles per gallon more than the statutorily required 1982 corporate average fuel economy standard (CAFE) of 24 miles per gallon, we note that by Executive Order No. 12375, August 4, 1982, the standard was amended. The new requirement is that executive agency vehicles acquired in a fiscal year need only meet, not exceed, the required CAFE. Accordingly, this basis of the protest is moot.

Chrysler's assertion that GSA lacked adequate grounds for its determination to cancel is predicated in large measure on Chrysler's contention that there was no change in GSA's requirements which provided a compelling reason for cancellation, as required under Federal Procurement Regulations (FPR) § 1-2.404-1(a) (1964 ed. circ. 1). In this regard, Chrysler has mistakenly assumed that the reason for the cancellation must be one which arises after issuance of the solicitation. We have expressly held that an agency may properly determine to cancel a solicitation after bid opening no matter when the information precipitating cancellation first surfaces. Marmac Industries, Inc., B-203377.5, January 8, 1982, 82-1 CPD 22; Ingersoll-Rand Company, B-192279, October 6, 1978, 78-2 CPD 258; Edward B. Friel, Inc. et al., 55 Comp. Gen. 488 (1975), 75-2 CPD 333. Thus, GSA could properly determine that cancellation was warranted even if no new information became available during its post-bid-opening review.

It should also be noted that the rejection of all bids (in this case a rejection of all bids for particular items) is a matter of administrative discretion and that a request for bids does not impart an obligation to accept any of the bids received, including the lowest conforming one. T & G Aviation, B-186096, June 21, 1976, 76-1 CPD 397. Our decisions and FPR § 1-2.404-1(a) recognize that a solicitation may be canceled after bid opening only when a compelling reason for the cancellation exists. However, we have recognized that the determination of whether a sufficiently compelling reason for cancellation exists is primarily within the discretion of the administrative agency and will not be disturbed absent proof that the decision was clearly arbitrary, capricious or not supported by substantial evidence. Central Mechanical, Inc., B-206030, February 4, 1982, 82-1 CPD 91. Moreover, we have

specifically held that in determining whether such a reason exists, one of the factors which must be considered is whether the best interest of the Government would be served by making an award under the solicitation. In this respect, when it is determined that an IFB overstates the minimum needs of the Government, or the agency decides after bid opening that its needs may be satisfied by a less expensive alternative, the best interest of the Government requires cancellation. Uffner Textile Corporation, B-204358, February 8, 1982, 82-1 CPD 106.

Here, after bid opening, GSA conducted a financial analysis of the costs associated with purchasing all 4,572 vehicles solicited under the IFB versus the costs of utilizing a different mix of vehicles. In particular, it considered the possibility of continuing to operate certain older owned vehicles which were already available in the fleet, rather than phasing them out at 5 years or 60,000 miles as contemplated. GSA's conclusion was that it would be significantly less expensive to maintain the older vehicles and to purchase fewer new vehicles, using the money otherwise available for this purchase to exercise certain options to purchase 5,000 leased 1980 vehicles which were already in the Government fleet. In this regard, we have held that an agency has considerable discretion in its determination of how best to utilize its funds and that it is within the discretion of the agency to cancel a solicitation on the basis that, by doing so, significant monetary savings would accrue to the Government. Edward B. Friel, et al., supra; 47 Comp. Gen. 103 (1967); Genco Tool and Engineering Co., B-204582, March 1, 1982, 82-1 CPD 175. Accordingly, we find that GSA's determination to cancel reflected the best interest of the Government and was based on a compelling reason.

Chrysler characterizes the cancellation as a decision to purchase new and used compacts instead of new subcompacts. However, we agree with GSA's argument that this characterization is inaccurate. The decision to cancel the order for subcompacts reflects GSA's determination that it could substitute existing older owned fleet vehicles for the new subcompacts; that is, that it could change its fleet mix by keeping certain vehicles otherwise slated for replacement, rather than replacing them with new subcompacts. This determination made available the funds which would otherwise have been spent on new subcompacts for use in exercising the purchase options on the 5,000 leased vehicles which also were already in the Government fleet. Thus, the 5,000 leased vehicles are not being substituted for the 1,176 subcompacts as Chrysler argues. Rather, other older vehicles are being retained by the Government which obviates

the need for the purchase of certain new vehicles and the money which otherwise would have been spent for the purchase of new cars is being used to exercise the purchase options on the already-leased vehicles, which, in turn, will generate further monetary savings. The 5,000 vehicles would remain in the Government fleet in any event; the difference is that their status will now be that of purchased vehicles rather than leased vehicles.

Chrysler also argues that cancellation of the subcompacts rather than other models solicited constitutes a violation of the "minimum needs rule." GSA states that the determination to cancel the subcompacts was based on the fact that compacts provide greater versatility for motor pool purposes than do subcompacts. While GSA also argues that this allegation is untimely since it questions the propriety of the IFB specifications, but was not raised until after bid opening, we believe this misconstrues Chrysler's argument. Chrysler is questioning the decision to cancel only one type of vehicle (subcompact) rather than another type (compact), which did not become an issue until after the determination to cancel, and which was timely filed upon notification of the cancellation decision.

We have held that the determination of what will satisfy the Government's needs is primarily within the discretion of procuring officials. We will not interpose our judgment for that of the contracting agency unless the protester shows that the agency's judgment is in error and that a contract awarded on the basis of such specifications would be a violation of law by unduly restricting competition. Essex Electro Engineers, Inc., B-191116, October 2, 1978, 78-2 CPD 247. In this instance, Chrysler is essentially proposing that subcompacts possess attributes which Chrysler believes are best suited to GSA's needs--most particularly alleged economy of acquisition and operation. Chrysler argues that the case is similar to that in 15 Comp. Gen 974 (1936), in which our Office held that specification of a "deluxe model" automobile impermissibly exceeded agency needs. However, the analogy is inapposite. In that case, we found that the agency had improperly restricted competition to deluxe model vehicles where it conceded that it did not need all of the features associated with such a model, but argued that since it needed some of the features, the deluxe model represented good value to the Government. In this instance, GSA has not required any allegedly frivolous options. Rather, it has determined that its needs could better be served by the larger compact models because these models can better accommodate more

passengers and luggage, thus making them more versatile and hence more suited for motor pool use where the need for capacity of five passengers and significant amounts of luggage occurs. We find that Chrysler has not shown this argument to be erroneous and that GSA had a reasonable basis to elect to cancel the subcompact vehicles rather than the compact vehicles, once it determined that cancellation of some of the vehicles was warranted.

Chrysler also argues that GSA's determination to exercise its purchase option on the leased vehicles violated requirements contained in FPR §§ 1-1.1502 and 1-1.1507 (46 Fed. Reg. 7966, 7967, January 26, 1981). These sections place certain limitations on the use of options and require certain determinations and analyses prior to the exercise of options. However, as explained above, the exercise of this option does not provide replacement vehicles for the subcompacts. These are provided by the extended use of other older vehicles that are already in the Government fleet. Accordingly, we need not address this argument.

Finally, Chrysler has argued, in the alternative, that it is entitled to bid preparation costs. A prerequisite to entitlement to such costs as a result of cancellation of a solicitation is a showing that the Government acted, arbitrarily or capriciously with respect to a claimant's bid or proposal. Ramsey Canyon Enterprises, B-204576, March 15, 1982, 82-1 CPD 237. In this instance, we have found that the agency had a reasonable basis for its decision to cancel. While this decision may have been based on facts which were available prior to the issuance of the IFB, there is no allegation that the solicitation was issued in bad faith. Even if we assume that, in light of the information available initially, GSA should have realized that the subcompact requirement was unnecessary and should have issued an IFB for fewer vehicles, the failure to make this determination appears to be the result of negligence, and there is no evidence in the record to suggest otherwise. Mere negligence or lack of due diligence does not, standing alone, rise to the level of bad faith or arbitrary or capricious action which gives rise to the recovery of bid preparation costs. Fortec Constructors, B-188770, August 7, 1979, 79-2 CPD 89; Scona, Inc. B-191894, January 23, 1979, 79-1 CPD 42.

We deny the protest and the claim for bid preparation costs.

for Comptroller General
of the United States