

DECISION



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

FILE: B-219886.2

DATE: February 5, 1986

MATTER OF: Malco Plastics--Reconsideration

DIGEST:

Request that GAO revise recommendation that agency not exercise any options under awarded contract and instead recommend termination for convenience is denied since record shows that termination of current contract and resolicitation would not be in the government's best interests.

Malco Plastics requests reconsideration of our recommendation for corrective action in Malco Plastics, B-219886, Dec. 23, 1985, 85-2 CPD ¶ _____, in which we sustained Malco's protest concerning a geographic restriction imposed by the General Services Administration (GSA) for the operation and maintenance of the United States National Credit Card Program. We sustained Malco's protest since we found that the geographic restriction unduly restricted competition.

GSA awarded a contract despite Malco's protest based on a determination that the services were urgently needed. Because of this determination and in view of the startup period required by a new contractor, we did not recommend terminating the current contract and resoliciting offers. Rather, we recommended that GSA not exercise any options under the contract and conduct a new competition on a basis that removes the current geographic restriction. In addition, we awarded Malco the costs incurred by the firm in filing and pursuing the protest.

Malco contends that terminating the present contract and resoliciting at this time would still result in a cost savings to GSA in the current contract year and, as a result, requests that we reconsider our decision on this issue. In addition, Malco requests that we direct GSA to issue the revised solicitation at least 6 months before the end of the basic contract period so that some of the problems encountered with the current solicitation might be avoided. Finally, Malco requests that we reimburse the firm directly.

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The decision whether to recommend termination of a contract as a form of corrective action involves the consideration of many factors including, but not limited to, the seriousness of the procurement deficiency, the extent of performance, the degree of prejudice to other offerors or to the competitive procurement process and the impact of termination on the contracting agency's mission. Bid Protest Regulations, 4 C.F.R. § 21.6(b) (1985); Memorex Corp., B-213430.2, Oct. 23, 1984, 84-2 CPD ¶ 446.

Here, despite the alleged cost savings, we remain unpersuaded that termination of the contract would be in the best interests of the government. GSA determined that the services were urgently needed and the delay in resoliciting would be potentially disruptive to the agency's mission. We have recommended that GSA not exercise any options under the contract and, under these circumstances, we do not consider contract termination an appropriate remedy. Accordingly, we affirm our prior decision in this respect.

Concerning Malco's request that we direct GSA to issue the new solicitation on a specific date, we note that under our Bid Protest Regulations, 4 C.F.R. part 21, our Office considers protests involving specific procurement actions only, i.e., whether a contract award on a proposed contract award complies with statutory, regulatory, and other legal requirements. Systems Engineering International Inc., B-218016, Feb. 7, 1985, 85-1 CPD ¶ 164. Malco, in effect, has questioned the propriety of GSA's actions with respect to the future solicitation of this requirement. Accordingly, it is not an issue cognizable under our jurisdiction to review bid protests. 31 U.S.C.A. § 3551, et seq. (West Supp. 1985).

Finally, with respect to the costs incurred by Malco in filing and pursuing its initial protest, Malco should submit substantiating documentation to GSA to establish the amount it is entitled to recover. If an agreement cannot be reached within a reasonable time, our Office will determine the amount. 4 C.F.R. § 21.6(f).

Our prior decision is affirmed.

for 
Comptroller General
of the United States