



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Logics, Inc.  
**File:** B-237411  
**Date:** February 1, 1990

Craig V. Russell, Esq., Russell, Krafft, Gruber & Huber, for the protester.  
Vera Meza, Esq., and John J. Welling, Esq., Department of the Army, for the agency.  
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Contracting agency's decision to cancel a request for proposals and to place a delivery order for part of the canceled requirement under an existing contract is reasonable where, in view of unexpected deterioration of supply stock, only one source can meet the agency's urgent need for the item.

## DECISION

Logics, Inc., protests the cancellation of request for proposals (RFP) No. DAAA09-89-R-0012, issued by the U.S. Army Armament, Munitions and Chemical Command, for 129 microwave chassis and 86 oscillators for the M163 Vulcan Air Defense System, and the subsequent purchase of such equipment from AEL Defense Corporation under an existing contract. Logics argues that the Army's decision to cancel the RFP after receipt of proposals and best and final offers (BAFOs), and to place an order for the equipment under an existing contract, violated the competitive procurement process, and was, in part, improperly based on illegal discrimination against Logics by the Army. Logics also alleges that there was bid rigging during the procurement.

We deny the protest.

The Army issued the RFP on January 6, 1989, as an unrestricted procurement; however, clause H-6 of the RFP notified offerors of a 10 percent price evaluation preference for proposals submitted by small disadvantaged business (SDB) concerns. Initial offers were due on March 14, and Logics, invoking the price preference accorded SDBs, was one of four offerors responding to the RFP. BAFOs were received on June 30, and nearly 2 months later, on August 29, the Army canceled the procurement, claiming a change in government requirements. On September 8, the Army issued an order to AEL for the 129 microwave chassis under AEL's existing contract No. DAAA09-88-G-0020/0006.

Also on September 8, Logics, unaware of the award to AEL, wrote a letter to the Commander of the Armament, Munitions and Chemical Command, asking for an investigation of the cancellation of the RFP, and a reversal of the Army's decision. On October 9, Logics received the Commander's September 28 response to its inquiry. The response explained that because of the increasing urgency of the need for the microwave chassis portion of the requirement, an order had been "awarded to a source already in production of this item who could make the earliest possible delivery in support of the Vulcan Air Defense System." With respect to the oscillators, the Commander explained that no award had been made and that Logics would be given the opportunity to submit an offer in the event of a resolicitation. On October 12, Logics protested to our Office.

Logics alleges that the competitive process has been violated by the Army in canceling the procurement, and that it was illegally discriminated against, presumably because Logics submitted an offer as an SDB concern. Logics further alleges that this procurement was tainted by bid rigging. As evidence for these allegations, Logics asserts that despite the fact that it submitted the lowest-priced offer, the procurement was canceled and award was made to an existing contractor at a higher price.

The Army denies Logics' allegations of discrimination and bid rigging, responding instead that its decision to cancel the RFP and place an order for the microwave chassis portion of the requirement with an existing contractor does not violate the competitive procurement process, and was reasonable because of unexpected changes in its supply

posture.<sup>1/</sup> The Army explains that after issuing the solicitation and during the pendency of the procurement, expedited purchase of the microwave chassis became urgent because a lack of the equipment was causing a deterioration in Army readiness. According to the contracting officer, there was no such equipment on hand for repair and reuse; there were 45 back orders for the chassis; the Army had experienced an increase in the monthly usage rates for the chassis since issuing the solicitation; and the Army projected even higher future usage rates due to an ongoing upgrade program. Based on these facts, the contracting officer decided to cancel the RFP and award to the contractor already manufacturing the equipment in order to achieve a significantly accelerated delivery schedule and prevent further deterioration in field readiness. The Army states it will procure the remaining portion of the original requirement, the oscillators, using regular competitive procedures.

In a negotiated procurement, a contracting officer need only have a reasonable basis to cancel a solicitation after receipt of proposals, as opposed to the cogent and compelling reason required for cancellation of an IFB after receipt of sealed bids. ACR Electronics, Inc., B-232130.2; B-232130.3, Dec. 9, 1988, 88-2 CPD ¶ 577. Here, the Army determined that cancellation of the RFP was justified because of the increasing urgency of maintaining an adequate supply of the microwave chassis to ensure field readiness.

With regard to the sole source order to AEL, under the Competition in Contracting Act of 1984, an agency may use

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<sup>1/</sup> With respect to Logics' allegations of discrimination and bid rigging, we have held that such allegations amount to assertions of bad faith on the part of government officials. See M.G. Technology Corp., B-222438, May 29, 1986, 86-1 CPD ¶ 503 (discrimination); Jay Fran Corp., B-217145, Jan. 2, 1985, 85-1 CPD ¶ 8 (bid rigging). In its initial protest, Logics offers no evidence, other than its bare assertions, that it suffered discrimination by the agency, or to support its claim of bid rigging. The Army responded to these allegations of bad faith in its agency report; however, Logics failed to rebut any of the response on these two points. Where an agency specifically addresses issues raised by the protester in its initial protest and the protester fails to rebut the agency response in its comments, we consider the issues to have been abandoned by the protester. Herman Miller, Inc., B-234704, July 10, 1989, 89-2 CPD ¶ 25.

other than competitive procedures to procure goods or services where the agency's requirements are of such an unusual and compelling urgency that the government would be seriously injured if the agency were not permitted to limit the number of sources from which it seeks bids or proposals. 10 U.S.C. § 2304(c)(2) (1988). This authority is limited by the requirement of 10 U.S.C. § 2304(e) that agencies seek offers from as many potential sources as is practicable under the circumstances. An agency, however, has the authority under 10 U.S.C. § 2304(c)(2) to limit the procurement to the only firm it reasonably believes can properly perform the work in the available time. Support Sys. Assocs., Inc., B-232473; B-232473.2, Jan. 5, 1989, 89-1 CPD ¶ 11. We will object to the agency's determination to limit competition based upon unusual and compelling urgency only where we find that the agency's decision lacks a reasonable basis. Gentex Corp., B-233119, Feb. 13, 1989, 89-1 CPD ¶ 144.

In support of the decision to cancel the RFP and make a sole source award to AEL, the Army cites the unexpected deterioration of its stock of microwave chassis during the course of the procurement and the resulting readiness problems it faced. In light of the critically low stock position, the Army estimated that many field units would become inoperative by December 1989. Because none of the offerors under the canceled RFP other than AEL had successfully completed first article testing, the earliest date the Army could expect delivery from them if award were made under the RFP would be February 1991, based on a 5-month period for first article testing and approval and a 1-year production period. By instead issuing a sole source to AEL, a current producer of the chassis, the Army achieved the earliest possible delivery date of October 1990.

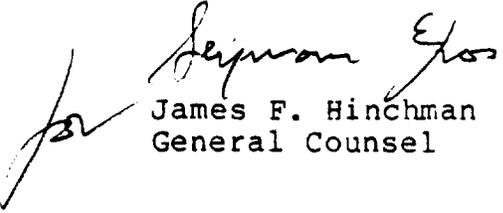
Logics contends that the Army could have negotiated an October 1990 delivery with it as well. According to Logics, the 17-month period for first article testing and approval and production could have been reduced to 1 year by subtracting 3 months from the planned 5-month first article approval process; subtracting 1 month from the government's first article approval process; and authorizing Logics to buy production materials and incur other start-up costs before first article approval. Logics does not explain why these reductions in schedule are feasible and we see no basis to require the Army to jeopardize satisfying its urgent need for the chassis by the earliest practicable date by accepting the scheduling assumptions suggested by Logics.

Logics also argues that the deterioration in the supply stock of the chassis was due to a lack of advance planning

by the Army and therefore cannot properly justify the sole source award to AEL. The record does not support this assertion. Rather, the record shows that the low supply was the result of an unexpected increase in demand for the items due to a greater than anticipated number of field failures, together with an increased need for the chassis in connection with the conversion program, which was not identified until after issuance of the RFP.

In view of the Army's urgent need for the chassis and the fact that AEL was the only offeror in a position to satisfy the Army's requirements, we find that the Army acted reasonably in canceling the RFP and issuing a sole source order for the chassis to AEL.

The protest is denied.

  
James F. Hinchman  
General Counsel