



Comptroller General
of the United States

Washington, D.C. 20548

(Ayer)

Decision

Matter of: JTL, Inc.
File: B-240411
Date: July 23, 1990

Sam Zalman Gdanski, Esq., for the protester.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

The General Accounting Office does not review agency decisions to terminate contracts for the convenience of the government--except when the termination results from an agency's determination that the agency improperly awarded the initial contract--since contract termination is a matter of contract administration not within its bid protest function.

DECISION

JTL, Inc. protests the Department of the Army's issuance of invitation for bids (IFB) No. DABT39-90-B-0058, for the removal of a leaking underground storage tank. JTL alleges that the IFB is improper because the work called for was encompassed in JTL's contract No. DABT39-89-D-1012 (a requirements contract for both testing and removal of underground storage tanks). In support of its contention the protester cites Torncello v. U.S., 681 F.2d 756 (Ct. Cls. 1982) (holding that the government may not use termination for convenience to excuse its breach of requirements contracts unless there are post-award changes of circumstances or expectations that affect the contracts), and several related cases.

We dismiss the protest.

The agency advises that it learned after award that Environmental Protection Agency (EPA) rules required the removal of any leaking tanks within 30 days. The agency terminated JTL's contract for the convenience of the government after discovering that it lacked funding to pay JTL for removal, within 30 days, of all leaking underground storage tanks.

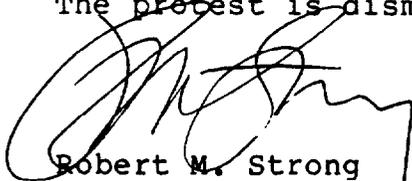
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JTL's protest, relates primarily to a breach claim--a contract administration matter. See Union Natural Gas Co., B-238032, Jan. 26, 1990, 90-1 CPD ¶ 117. Specifically, JTL implies that the agency breached its contract with JTL when it terminated JTL's contract for the convenience of the government. From this premise, JTL argues that the agency acted in bad faith when it solicited for work covered by JTL's terminated contract.

Our Office does not review agency decisions to terminate contracts for the convenience of the government, since that is a matter of contract administration which is not within our bid protest function. Special Waste, Inc., 67 Comp. Gen. 429 (1988), 88-1 CPD ¶ 520; Amarillo Aircraft Sales & Servs., Inc., 63 Comp. Gen. 568 (1984), 84-2 CPD ¶ 269. An exception to that rule occurs where the termination for convenience results from the agency's determination that the initial contract award was improper. Norfolk Shipbuilding and Drydock Corp., B-219988.3, Dec. 16, 1985, 85-2 CPD ¶ 667.

Here, the protester does not allege that the initial award was improper. Instead the termination appears to stem from the agency's post-award discovery of the applicability of EPA rules concerning the removal of leaking underground storage tanks, and the agency's desire to avoid a conflict with EPA's rules since it lacked funds necessary for compliance. See Salsbury Indus. v. U.S., No. 89-1592 (Fed. Cir. June 13, 1990) (LEXIS, Pubcon library, Courts file). In our view, Torncello is inapposite to the protester's situation since the protester alleges no facts that would amount to a breach of contract or bad faith termination.

The protest is dismissed.



Robert M. Strong
Associate General Counsel