DECISION

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

58981

FILE: B-182384 DATE: August 6, 1975 97302

MATTER OF: The Ellinor Corporation

DIGEST:

Agency determination that contract termination is not in Government's best interests due to costs involved and protester's recent unsatisfactory performance on similar contracts is reasonable and within limits of agency discretion.

This Office concluded in The Ellinor Corporation, B-182384, April 23, 1975, 54 Comp. Gen. ___, that the Air Force failed to evaluate transportation costs in accordance with the terms of the invitation for bids and applicable regulations, that a proper evaluation would have made Ellinor the low bidder, and, therefore, the award to the Panel Corporation of America (PANCOA) was improper. Accordingly, we recommended to the Air Force that it consider the feasibility of terminating the contract with PANCOA and awarding any terminated quantity to Ellinor.

By letter of June 4, 1975, with attachments, the Air Force advised this Office of the reasons for its conclusion that it would not be in the best interests of the Government to disturb the present contract with PANCOA. A copy of this letter was provided to Ellinor. For the reasons stated below, we do not object to the determination not to disturb the contract.

At the time of its report, the Air Force informed this Office that a termination point of not less than 64 percent of the PANCOA contract would be required to maintain continuity of supply (assuming the termination could have been effected by June 16, 1975). This was based on a lead time of 120 days for Ellinor. At that point, the Air Force advises that PANCOA projects its termination costs to be $328,000 ($149,000 for overhead and indirect costs and $197,000 for inventory to be taken over). While the Air Force states that any overstatement of these costs can only be determined on final audit, it advises that there is a distinct possibility of a serious economic impact on the Government resulting from the combination of increased internal administrative costs together with termination charges. In addition, PANCOA has submitted a detailed summary of materials on hand and under firm purchase order and its manufacturing schedule under this contract.

Furthermore, the Air Force indicates that Ellinor's delivery on recent contracts for identical items has often been late and that the quality of its performance has been substandard. We are advised that subsequent to the affirmative preaward survey report issued in connection with Ellinor's bid in this procurement, it has been discovered that targets previously produced by Ellinor have disintegrated during towing. This, we are advised, poses a distinct threat to the aircraft attacking the aerial tow targets due to the possible ingestion of the disintegrating targets into the aircraft jet engines. The Air Force reports that it is reluctant to award a contract to Ellinor for these targets pending investigation of these recently discovered defects.

Ellinor contends that the Air Force position regarding the impact on the Government of increased internal administrative and termination costs is vague. As to the increase in administrative costs, the Air Force reports that it is difficult to accurately evaluate the extent of such costs and it points out that duplicate administrative costs and DCAS functions are unavoidable. We recognize that such costs in matters as this are not insignificant.

With respect to the accuracy of the $328,000 termination cost figure submitted by PANCOA and relied upon by the Air Force, Ellinor argues that it is based on an erroneous assumption of a 120 day lead time for Ellinor, instead of the 77 day figure now offered by Ellinor to the Air Force. Ellinor believes that this assumption was apparently based upon the 120 day lead time figure quoted in the original Ellinor bid. We are advised by the Air Force, however, that the 120 day figure is based on past experience that Ellinor's normal lead time from award to delivery of first increment is approximately 120 days after receipt of order. It also appears that, in fact, Ellinor has had a history of delinquencies on all target contracts issued to them by the Air Force in the past two years. As such, we see no reason to conclude that the Air Force estimate is not a reasonable prediction of actual lead time.

Concerning the termination costs to be incurred by the Air Force, it seems that the Air Force has not substantiated the $328,000 figure. Ellinor contends that this figure is accurate only if it is assumed that PANCOA already has in inventory virtually all of the materials necessary to perform the entire contract. Our review of the record, however, leads us to conclude that the termination costs would be substantial. As early as November 20, 1974, PANCOA advised this Office that much of the material needed to perform the contract was in critical supply, that early purchasing of many items was necessary for timely contract compliance, and that lead time for some target items was very long. Moreover, PANCOA's summary of materials on hand and under firm purchase order indicates it has committed itself to a large majority of required materials. The Air Force is knowledgeable regarding overhead and indirect costs on such contracts since it appears that PANCOA and Ellinor have been frequent contractors with the Air Force for these items. In view of the above, we believe it is reasonable to assume that termination costs would be substantial.

Finally, we believe that the substandard condition of recent Ellinor targets must be considered in evaluating the Air Force position. The Air Force has informed us that as of July 29, 1975, investigation of the Ellinor-manufactured targets on hand at a number of Air Force installations reveals that 572 of the 944 targets thus far examined have been found defective. While the Air Force is still continuing its investigation, its reluctance to award this contract to Ellinor pending a final determination of the reasons for target disintegration is, we believe, reasonable. Also, the Air Force is concerned that movement of certain of Ellinor's manufacturing personnel and equipment from Dallas, Texas, to Stockton, California for this contract will require additional time for training and movement that may not be practical in view of the tight delivery schedule. Although Ellinor asserts that its performance record has been excellent and that it has never been advised through proper channels of the disintegration in flight of its targets we note that the reported disintegration problem was only discovered recently by the Air Force. We believe that the Air Force properly considered this factor in determining whether to terminate its existing contract with PANCOA.

In view of the above, we will not object to the Air Force conclusion that termination of the PANCOA contract would not be in the best interests of the Government and we will take no further action in this matter.

R.F.Keller

Deputy Comptroller General
of the United States