

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

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FILE: B-184482

DATE: April 16, 1976

99055

MATTER OF: Bancroft Cap Company, Inc.

DIGEST:

1. Selection of items for inclusion on Industrial Preparedness Planning List is for determination of military component affected through exercise of broad administrative discretion. Record fails to establish abuse of discretion where item questioned--fatigue cap--requires use of special equipment, and different stitches and processes (as opposed to common baseball cap) in its manufacture, and could be considered essential to operational effectiveness, including training, or to safety and survival of military personnel.
2. Delay in submitting requirements to DSA procuring activities prevented issuance of FY 1976 Industrial Preparedness Planning List, and 1975 list, including item covered by procurement, was extended beyond end of fiscal year. Therefore, contracting officer did not set aside procurement for small business because large business planned producer of item under Industrial Preparedness Production Planning Program desired to participate. No impropriety found since regulation and DOD Instruction do not preclude extension, agency has responsibility to adopt own list, and personnel who approved FY 1975 list were responsible for adoption of unissued FY 1976 list.

This is a protest by the Bancroft Cap Company, Inc. (Bancroft), regarding the failure of the Defense Personnel Support Center, Defense Supply Agency (DSA), to totally set aside for small business participation invitation for bids No. DSA100-75-B-1211, for 772,140 hot weather caps. Award has been made to Proper International, Inc. (Propper).

As indicated in the DSA report to our Office on the protest, the "cap, hot weather, OG-106," is assigned National Stock Numbers 8415-00-117-4835 through 8414-00-117-4846, depending upon size. Group 84 items include "Clothing, Individual Equipment, and Insignia," while the more specific Federal Supply Class designation (8415) denotes "Clothing, Special Purpose." The caps are described as olive green cotton summer weight fatigue caps, bearing a general physical resemblance to baseball caps. The cap is procured annually in substantial numbers.

B-184482

Bancroft contends that the procurements of these caps have been made by total small business set-asides for many years. It asserts that the solicitation was not set aside solely because the contracting officer found that such caps were included as a planned item on the Industrial Preparedness Planning List (IPPL) implementing the Industrial Preparedness Production Planning Program (IPPP program). In Bancroft's view, the cap fails to meet the selection criteria specified for the IPPP program, and, in any event, no IPPL was properly adopted for Fiscal Year (FY) 1976, before the time scheduled for bid opening.

The IPPP program is established by the Armed Services Procurement Regulation (ASPR) § 1, Part 22 (1974 ed.), "to assure capability for the sustained production of essential military items to meet the needs of the U.S. and Allied Forces during an emergency." ASPR § 1-2203(a). The program anticipates development of production planning schedules with planned producers through nonbinding agreements (DD Form 1519), forming a basis for industrial preparedness planning, and procurement planning, programming and budgeting. American Air Filter Company, Inc., B-184543, February 5, 1976, 55 Comp. Gen. _____, 76-1 CPD 73. Standards for including an item on the IPPL are contained in Department of Defense Instruction (DODI) 4005.3 (July 28, 1972). DODI 4005.3 V provides, inter alia:

- "A. Policy. In accordance with the criteria set forth below, each DoD component is responsible for selection of items necessary for its particular industrial preparedness planning objectives. * * * Items selected for planning will constitute the Industrial Preparedness Planning List * * *

- "B. Criteria for IPPL Item Selection. Industrial preparedness planning will be limited to military end items or components which are essential to operational effectiveness under combat conditions, including training, or to the safety and survival of personnel and meet one or more of the following criteria:

B-184482

- "1. Require a long leadtime.
- "2. Require development of, or additional capacity to meet emergency production requirements.
- "3. Require continuous surveillance to assure preservation of an adequate base to support emergency production requirements.
- "4. Require critical skills or specialized production equipment.

"C. Prohibitions and Exceptions.

- "1. Items will not be selected for planning if:

* * * * *

- "c. Normally commercially available in sufficient quantities to meet the anticipated requirements."

The foregoing instruction clearly charges the military component affected with determining whether an item should be included on the IPPL. Such a determination, involving military and supply considerations, necessarily is made through the exercise of broad administrative discretion which we would not ordinarily question absent clear evidence of abuse.

In our view, the record fails to establish that DSA abused that broad discretion in determining that the cap should be listed. Clothing items clearly could be considered "military end items or components which are essential to operational effectiveness under combat conditions, including training, or to the safety and survival of military personnel." Bancroft contends that listing should be prohibited since the caps are commercially available in adequate quantities to meet past or present military needs. Even if this is true, the IPPP program is meant to insure that an adequate industrial base exists to meet possible future critical

B-184482

military requirements, through scheduling agreements and by opening Government procurements to all interested suppliers. While Bancroft argues that the cap is a little different from the common baseball cap, it does admit to certain meaningful differences, i.e., special equipment is necessary in manufacture, and different processes and stitches are required.

In regard to Bancroft's contention that no valid IPPL was in force, the record discloses the following. The cap was included on the 1975 IPPL. No separate IPPL was issued for FY 1976, during which the bid opening and subsequent award were scheduled to and did occur, due to delay by the military services in submitting mobilization reserve acquisition requirements to DSA procuring activities. As a result, the procuring activities were not able to compile IPPL requirements, and were advised by the Quality and Production Division, Directorate, Procurement and Production, DSA, in effect, to base FY 1976 planning on the previously approved FY 1975 IPPL. This was accomplished by memorandum dated prior to the end of FY 1975 advising all DSA supply centers to extend planning schedules to FY 1977. A new list has since been approved, applicable to FY 1977, which includes the cap.

In pertinent part, DODI 4005.3 V(E)(1) also provides that:

"Each DoD Component will:

"a. Select items for industrial preparedness planning in accordance with the criteria and guidance contained herein.

* * * * *

"e. Publish and update their own IPPL, including such revisions as may be agreed to * * *; provide copies to the * * * [Assistant Secretary of Defense (Installations and Logistics)] and other DoD Components that have a need to know."

The instruction establishes annual deadlines by which date lists are "due" to be submitted to the Office of the Assistant Secretary of Defense. While continuing planning and review are doubtless assumed, nowhere do the regulations and instruction require annual

B-184482

review of the criteria in regard to each item included on an IPPL, impose particular or rigid formalities as prerequisites to the adoption of a valid list, or preclude extension of an existing list. As indicated by the latter portion of the instruction quoted above, responsibility is imposed on each of the several Department of Defense Components (including DSA) to adopt and publish its own IPPL.

That DSA would otherwise have adopted a new list is not dispositive of the issue, where the record establishes that the agency was prevented from doing so and does not show any abuse of discretion in determining that the life of the list should be extended because of the emergent circumstances that existed. Since the record further discloses that the advice to extend the FY 1975 list was made by the same personnel who had approved that list, and who would have been responsible for adoption of a FY 1976 IPPL, we are unable to conclude that DSA acted improperly.

This procurement was subject to the provisions of ASPR § 1-706.1(e)(ii), which states:

"None of the following is, in itself, sufficient cause for not making a set-aside:

* * * * *

"(ii) the item is on an established planning list under the Industrial Preparedness Program, except that a total set-aside shall not be authorized when one or more large business Planned Emergency Producers of the item desire to participate in the procurement (but see 1-706.6 as to partial set-asides);" (Emphasis added.)

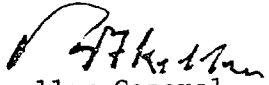
In American Air Filter Company, Inc., *supra*, we rejected the suggestion of the Small Business Administration that the above

B-184482

regulation is invalid as an additional limitation on small business set-asides not sanctioned or recognized by section 15 of the Small Business Act, 15 U.S.C. § 644 (1970). We concluded that "DOD may impose reasonable limitations on when a total small business set-aside can be made, if such limitations are necessary to protect legitimate DOD concerns" and that "we believe DOD issued * * * [ASPR § 1-706.1(e)(ii)] as a valid limitation on making total small business set-asides necessary to protect a legitimate national defense concern of allowing large business 'planned producers' an 'equitable' opportunity to compete on procurements for mobilization planning items." Stated otherwise, ASPR §§ 1-706.1(e)(ii) and 1-2206(a) are intended to foster the goal of an adequate industrial base by opening Government procurements to all planned producers, where the item to be procured is a planned item under the IPPP program.

We are informed that copies of the solicitation were issued to 11 firms, of which Propper and Society Brand, Inc., were then classified as other than small business firms. Propper had indicated an interest in the procurement prior to issuance of the IFB. We are also informally advised that Propper has since been reclassified as a small business concern by the Small Business Administration.

Accordingly, Bancroft's contention that the contracting officer acted erroneously in not limiting this solicitation as a total small business set-aside is rejected. Bancroft's protest is denied.


Deputy Comptroller General
of the United States