

**DECISION**



*McCann*  
*GGM*  
*14802*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-198605

DATE: September 3, 1980

MATTER OF: American Vault Company, Inc. *DLG05188*

**DIGEST:**

1. Where question whether contract should be terminated for convenience is dependent upon whether there was impropriety in award process, GAO will review validity of award procedure.
2. Where IFB provides that certain items may be excluded from solicitation if soil conditions warrant, but soil conditions are not known to be problem at time of award, award made without knowledge of problem is proper and subsequent experience making it apparent that item is unsuitable because of soil conditions does not retroactively affect validity of award.
3. Bidder may enjoy competitive advantage by virtue of incumbency or own particular circumstances.

American Vault Company, Inc. (American Vault), has protested the award by the Veterans Administration (VA) of contract No. V632P-1719 to Concrete Products Corp. (Concrete Products) for grave liner covers for Calverton National Cemetery (Calverton). *ARC00016*  
*DLG05189*

Essentially, the basis of the protest is that an award should have been made to American Vault for grave liners and covers under invitation for bids (IFB) 632-02-80 instead of an award for grave liners to Concrete Products under that IFB and an award for covers to Concrete Products under a subsequent IFB. American Vault states that Concrete Products had an unfair competitive advantage in bidding on the cover

*[Contract Award Protest]* *AGC000997*  
*011914*  
*113207*

contract in that Concrete Products was the incumbent on the grave liner contract and knew what American Vault bid for grave liners with covers for that contract.

We do not consider the protest to have merit.

The VA has indicated that subsequent to award of the grave liner contract to Concrete Products the VA found that use of the grave liners without covers was creating problems because soil conditions were not as the VA anticipated. The VA considered terminating the contract, but decided instead to remedy the situation by procuring covers for the grave liners through a competitive procurement upon which Concrete Products was the low bidder.

Whether a contract should be terminated for the convenience of the Government is a discretionary administrative decision which ordinarily does not rest with our Office. However, where the question whether the contract should be terminated for convenience is dependent upon whether there was an impropriety in the award process, our Office will review the validity of the award procedure. Velda Farms, Division of the Southland Corporation, B-192307, October 3, 1978, 78-2 CPD 254.

IFB 632-02-80 solicited bids for grave liners with and without covers. American Vault was the low bidder for grave liners with covers (type IV). Concrete Products was the low bidder for grave liners without covers (type III). Concrete Products' low bid for grave liners without covers was less than American Vault's low bid with covers. The IFB provided:

"Procurement solicitation documents will include all types of grave liners as equivalents with award being made to the lowest bidder regardless of type offered. A type may be excluded if cemetery soil conditions, weather or other experience warrant."

In this case, [the award to Concrete Products was proper since it was in accord with the IFB award provision.] Concrete Products was the lowest bidder and, according to the VA, the conditions which might have warranted exclusion of the low bid type from the solicitation were not known to exist at the time of award. Although American Vault contends that the VA knew before award that the type III grave liners were not suitable for the soil conditions at Calverton, the evidence to which American Vault refers (a letter from the Director of VA's National Cemetery System to the Executive Director of the National Funeral Directors Association) to corroborate its position indicates that the VA did not become aware of the crushing effect of the soil conditions upon caskets at Calverton until after the type III grave liners were utilized. In this regard, the protester has the affirmative burden of proving its allegations. Rolair Systems, Inc., B-193405, November 9, 1979, 79-2 CPD 345; Peter Rosen Productions, Inc., B-192481, September 28, 1978, 78-2 CPD 243. The evidence furnished by American Vault supports the VA position. That the protester merely disputes the VA position does not satisfy the protester's burden of proof. Rolair Systems, Inc., supra; Peter Rosen Productions, Inc., supra.

While after experience with the grave liners it became apparent that the type was unsuitable because of the soil conditions at the cemetery, that does not retroactively affect the validity of the award. Therefore, there was no requirement that the VA terminate the contract for convenience. In the circumstances, the action the VA took to remedy the situation through the utilization of an IFB for grave liner covers was not improper.

Moreover, we have recognized that a bidder may enjoy a competitive advantage by virtue of its incumbency or own particular circumstances. ENSEC Service Corporation, 55 Comp. Gen. 656 (1976), 76-1 CPD 34.

The protest is denied.

*Harry R. Van Cleave*

For the Comptroller General  
of the United States