

**DECISION**

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

Ayer  
23606

**FILE:** B-208236

**DATE:** November 17, 1982

**MATTER OF:** Barker & Williamson

**DIGEST:**

Contention that agency should have included an economic price adjustment provision in the basic contract quantity because including provision only for option quantity allegedly unfairly discriminated against small business new producers, subject to first article requirement, is denied. Record shows agency exercised discretion consistent with applicable regulation; any competitive advantage of prior producers, eligible for waiver of first article, did not result from preferential unfair agency action but rather from prior producers' own peculiar circumstances.

Barker & Williamson (B&W) protests the Army's decision not to include an Economic Price Adjustment (EPA) provision covering the basic production quantity of 22,250 antennas under invitation for bids (IFB) No. DAAB07-82-B-B212, issued by the Army's Communications-Electronics Command, Fort Monmouth, New Jersey. B&W contends that where the Army decides that EPA coverage is properly applicable to the option quantity, as was done here, then EPA coverage should be equally applicable to the basic quantity. If coverage is not so extended to the basic quantity, B&W believes that prior producers of antennas will receive an "additional competitive edge" beyond that which normally accrues as a result of agency waiver of the first article requirement.

We deny the protest because the record shows that the Army's actions are consistent with applicable regulations and that any competitive advantage accruing to prior producers is not the result of preferential or unfair treatment but rather the result of the prior producers' own peculiar circumstances.

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B&W's argument, that not extending EPA coverage to the basic quantity will give an added edge to the competitive position of prior producers, is presented from the perspective of a small, new producer unable to qualify for waiver of the IFB's first article requirement. Essentially, B&W argues that this bidder is unfairly exposed to changing market conditions for a longer period of time than its prior producer competitor because of the Army's decision not to extend EPA coverage to the basic quantity. The IFB currently provides the awardee with EPA coverage upon exercise of the option. The Army can exercise the option at any time after award until 90 days after the delivery of the initial production quantity. B&W proposes that we direct the Army to extend EPA coverage to the basic quantity by amending the IFB to make, in the case of prior producers, the EPA applicable on the date of award, and to make, in the case of new producers, the EPA applicable on the date of final first article approval.

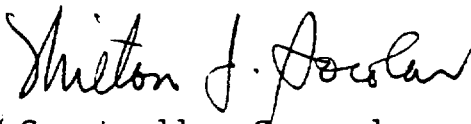
It is the bidder's responsibility in bidding a fixed-price contract to project costs and to include in the basic contract price a factor covering any projected cost increases. Risk is inherent in most types of contracts, but especially in fixed-price contracts such as the one involved here, and bidders are expected to allow for that risk in computing their bids. Palmetto Enterprises, 57 Comp. Gen. 271 (1978), 78-1 CPD 116. We have held it to be "within the ambit of administrative discretion to offer to competition a proposed contract imposing maximum risks upon the contractor and minimum administrative burdens on the agency." Massman Construction Co., B-204196, June 25, 1982, 82-1 CPD 624. The purpose of an EPA provision is to protect the Government in case of a decrease in the cost of labor or material and the contractor in the event of an increase; consequently, we do not object to the inclusion of such a provision where it is administratively determined to be necessary or desirable in the best interests of the Government. 22 Comp. Gen. 95, 98 (1942). Finally, the use of an EPA provision is discretionary with the procuring activity, and we will only question a decision regarding use of an EPA provision where it is shown to be arbitrary or capricious. Patty Precision Products Company, B-182861, May 8, 1975, 75-1 CPD 286.

In exercising its discretion, the Army was guided by Defense Acquisition Regulation (DAR) § 3-404.3(a) (1976 ed.). Under this regulatory guidance, the key factor prompting use of an EPA clause is the need for protection against "significant economic fluctuations" because an "extended period of contract performance" creates "serious doubt [regarding] the stability of market or labor conditions."

The Army reports that it has competed its antenna requirements since 1966, and in its three most recent acquisitions (similar to this IFB, i.e., first article, option provision, and similar delivery schedule) the Army did not include an EPA provision in either the basic or option portions of the contracts. In each instance, the competitors included small businesses. The Army also researched the Bureau of Labor Statistics' historical indexes for Electronics Components & Accessories for this procurement and found prices escalating at a decreasing rate since mid-1980 while labor costs in the industry were escalating fairly uniformly from 1979 through 1981 and in 1982 escalating at a decreasing rate. On this basis, the Army concluded that both material and labor costs were relatively stable--thus enabling bidders on this procurement to reasonably "forward price" the basic quantity of antennas.

In view of the relative market stability, we can find no basis upon which to question the Army decision not to provide EPA coverage for the basic quantity. We also believe that if a new producer is at a disadvantage it is because it is a new producer subject to the time delay inherent in the first article and not because of any act of the Government regarding inclusion or exclusion of an EPA provision.

Accordingly, the protest is denied.

*for*   
Comptroller General  
of the United States