

DECISION



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

FILE: B-222694 DATE: April 25, 1986
MATTER OF: Marine Logistics Corp

DIGEST:

1. Protest against termination of barge towing contract is dismissed where contracting agency did not decide that initial contract award was improper, but rather terminated contract because of facts arising after contract award. Consequently, propriety of termination relates to contract administration which GAO will not review.
2. Protest against implementation of backup contract at price higher than primary contract--which was terminated for convenience--is dismissed. Protest involves alleged, apparent solicitation defect--provision which contemplated that backup award would be at price higher than primary contract--but defect was not protested before solicitation's closing date; consequently, protest is untimely filed and will not be considered. See 4 C.F.R. § 21.2(a)(1) (1985).

Marine Logistics Corp. (Marine) has protested the termination for the government's convenience of its contract with the Navy for transporting a "barge mounted cargo of radio-active material" within the state of Washington.

We dismiss the protest.

Marine argues that the Navy improperly terminated its contract on the basis of an allegedly "minor" towing accident involving another ship and Marine's tugs under another non-Navy contract. This accident took place after the Navy's award to Marine.

We will generally not review an agency's decision to terminate a contract for convenience since by law the propriety of this decision relates to contract administration and is for review by a contract appeals board or a

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court of competent jurisdiction. Norfolk Shipbuilding and Drydock Corporation, B-219988.3, Dec. 16, 1985, 85-2 C.P.D. ¶ 667. But we will review the propriety of a termination for convenience where the termination is based on an agency decision that the initial contract award was improper. Norfolk Shipbuilding and Drydock Corporation, B-219988.3, above.

The Navy has informed us that it does not consider the original contract award to have been made improperly. Indeed, as noted above, Marine insists that the Navy terminated the contract because of a towing accident which took place after the contract had been awarded. Since there is no indication that the Navy or any other interested party considers that the original contract was awarded improperly, this protest issue relates solely to contract administration and is not reviewable by our Office.

Marine also questions the "implementation" of a "back-up" contract which was awarded after March 24, 1986, to another contractor after Marine's contract was terminated. This backup contract, which was completed on April 7, 1985, was awarded under the same procurement document on which all offerors proposed. We are informed by the Navy that the solicitation contained a line item which, in effect, provided for a backup contract in the event the low offeror could not perform.

Marine questions the backup contract only to the extent that the backup contract was awarded at a higher price than Marine's contract price. Because of this price discrepancy, Marine argues that the Navy should have resolicited the requirement instead of awarding the backup contract.

The Navy reports that the backup contract was awarded to Foss, Launch and Tug Company as the "second, low, responsive, responsible offeror under the original competitive solicitation." The Navy further states that the backup contract's price was determined to be "fair and reasonable as a result of competition involving a total of four responsive, responsible, competitive offers."

Marine's allegation that the backup contract is improper because Marine's terminated contract price is lower questions, in effect, the solicitation's line item, above, which contemplated that the backup contract would be awarded

at a price higher than the primary contract. Consequently, this ground of Marine's protest involves an alleged apparent solicitation defect which was not protested before the solicitation's closing date; therefore, this ground of protest is untimely and will not be considered. See 4 C.F.R. 21.2(a)(1) (1985).

A handwritten signature in black ink, appearing to read 'R. Strong', is positioned above the printed name.

Robert M. Strong
Deputy Associate
General Counsel