



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allstate Products Co.
File: B-230150
Date: March 11, 1988

DIGEST

An agency's determination that funds are not available for contract obligation is a sufficient reason to cancel a solicitation even after bid opening.

DECISION

Allstate Products Co., protests the United States Army Corps of Engineers cancellation of invitation for bids (IFB) No. DACA45-97-B-0139 for the replacement of windows at Fort Carson, Colorado, and seeks the recovery of its attorney fees incurred in preparing and prosecuting this protest and its bid preparation costs. We dismiss the protest.

The Army issued the IFB on August 11, 1987. Fifteen bids were received at bid opening on September 16, 1987, with Allstate's bid being the lowest received. On September 18, the fourth lowest bidder filed an agency-level protest over the award of the contract to any of the three lower bidders. Due to the protest, the Army delayed award of the contract. As of September 30, 1987, the close of fiscal year 1987, a decision on the protest had not been made and the contract had not been awarded. As a result, the fiscal year 1987 funds that were available for obligation on the contract expired. In a report dated October 7, 1987, the Army's contracting officer concluded that Palmer's protest should be denied. On January 15, 1988 the Army informed Allstate that no fiscal year 1988 funds were available due to budget cuts and therefore the invitation for bids was canceled.

Allstate argues that the government could have awarded it the contract, despite the protest. Allstate accuses the government of allowing fiscal year 1987 to expire and of using available funds for other projects. Allstate asserts that cancellation after bids are opened and exposed is inappropriate when award under a solicitation would serve the actual needs of the government. It seeks reinstatement of the IFB and award to Allstate.

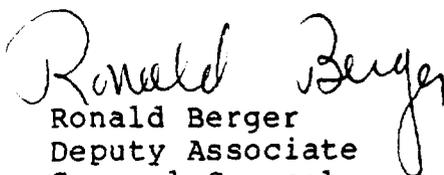
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It is true, as Allstate asserts, that under certain circumstances a contract may be awarded despite a pending bid protest. Federal Acquisition Regulation § 33.103(a) permits award under such circumstances if the contracting officer determines that services are urgently needed, that performance would be unduly delayed by failure to make prompt award or that the award would be advantageous to the government. However, as the Army made no determination that any of these circumstances were present, award while the protest was pending would have been improper. Moreover, the delayed award of a contract for administrative reasons (such as the pendency of an agency-level protest) is a procedural matter which does not itself provide a basis for protest. See Cedar Valley Corp., B-225475, B-225723, Feb. 24, 1987, 87-1 CPD ¶ 211.

Regarding the Army's cancellation of the IFB due to lack of funds, the general rule is that if the agency has a cogent and compelling reason to do so, cancellation is proper. The lack of appropriated funds is such a reason. Textronix, Inc., B-219981.4, June 12, 1986, 86-1 CPD ¶ 545. When the appropriation under which a contract is to be funded expires before the contract is awarded, an agency must obtain funding for the contract under a subsequent appropriation if it is to make the award. The International Association of Fire Fighters, B-224324.2, June 22, 1987, 87-1 CPD ¶ 619. Since no funds are available from the current appropriation, the Army had no choice but to cancel the IFB. Kora & Williams Corp., B-224987, Feb. 27, 1987, 87-1 CPD ¶ 228. The fact that Allstate's low bid was exposed is not relevant, since no award can legally be made without funds available for obligation. Textronix, Inc., B-219981, supra.

Finally, because we find the protest to be without merit, we will not consider the claim for costs. Monarch Engineering Company, B-218374, June 21, 1985, 85-1 CPD ¶ 709.

The protest is dismissed.


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