

Burkhead



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: East West Research, Inc.--Reconsideration

File: B-233623.2

Date: April 14, 1989

DIGEST

Prior dismissal of protest is affirmed where action taken by the agency has rendered issues raised therein academic.

DECISION

East West Research, Inc., requests that we reconsider our dismissal of its protest alleging that the Defense General Supply Center (DGSC) improperly suspended East West's fast payment privileges for 90 days under Blanket Purchase Agreement (BPA) No. DLA400-88-A-B535. We dismissed the protest as academic because DGSC subsequently reinstated East West's fast payment privileges. We affirm our prior dismissal.

On July 18, 1988, DGSC entered into the BPA with East West for expedited purchase of various supplies in the form of small dollar value calls.^{1/} The agency explains that under the ordering procedure of this BPA, it issues a shipping instruction sheet (SIS) and a vendor response card (VRC) to the BPA vendors on a rotational basis. The SIS contains all the information necessary for completion of the purchase and shipping actions. When the vendor completes and transmits the VRC indicating that the required items can be supplied,

^{1/} A BPA is "a simplified method of filling anticipated repetitive needs for supplies or services by establishing 'charge accounts' with qualified sources of supply." Federal Acquisition Regulation (FAR) § 13.201 (FAC 84-29). A BPA is ordinarily not a contract. See FAR § 16.702(a) (FAC 84-21). However, circumstances may transform the BPA into a binding obligation, that is, an enforceable contract. See Almar Industries v. United States, No. 464-87C, slip op. at 5 (Cl. Ct. Jan. 31, 1989). 045170/138429

it becomes legally obligated to supply the items subject to all the terms and conditions of the BPA. The BPA incorporated by reference FAR § 52.213-1, Fast Payment Procedure, which provides for an expedited method of payment.

The agency advised East West by letter dated October 31, that due to excessive delinquencies and poor quality history on other contracts, its fast payment privileges under the BPA had been suspended for a period of 90 days. Because the fast payment procedure is an essential part of the simplified BPA system, the agency states that it became necessary to suspend East West's BPA for the period that this payment privilege was withheld. East West filed a protest with our Office on November 17, alleging that the suspension of its eligibility to receive awards was improper. By letter dated December 27, DGSC informed the protester that its performance had improved and "effective immediately, fast pay privileges are restored." We dismissed the protest on Jan. 17, 1989, because, in our view, the contracting officer granted the relief requested by the protester.

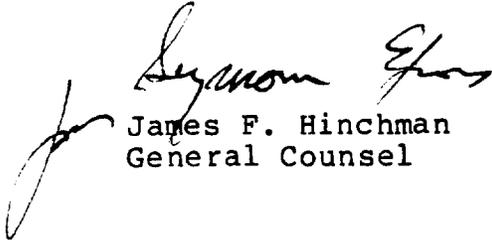
East West now argues that it was improperly denied an opportunity to compete during its suspension and that our Office should therefore rule on the propriety of the suspension and the validity of the awards made under the BPA during that time, since the suspension was based on "unsubstantiated allegations of nonperformance or late performance." East West also argues that unless we rule on its protest, the agency will continue to issue arbitrary suspensions which will escape review by our Office if the duration of the suspension is 90 days or less.

Based on the record before us, it appears that the issues raised by this protest may properly be viewed as a matter of contract administration. The agency here apparently invoked the authority of the BPA to suspend East West's fast payment privileges. Further, the BPA also includes the standard disputes clause and, thus, the protester's appropriate remedy may be to pursue its claim under the disputes clause.

In any event, with respect to the issues before our Office, the matter is now academic. East West's fast payment privileges have been reinstated. Consequently, East West is, in effect, requesting that our Office issue an advisory opinion regarding the events presented by this case which may have no relevance to any future situation. We decline to do so.

Finally, to the extent that East West may be seeking profits it would have made under the BPA during the suspension period, the general rule is that anticipated profits may not be recovered even in the presence of wrongful action. Care Hospital Supply, Inc., B-226002, Mar. 2, 1987, 87-1 CPD ¶ 237. There is no basis, therefore, for us to consider such a request.

The dismissal of the protest is affirmed.



James F. Hinchman
General Counsel