



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: California Inflatables Co., Inc.
File: B-241729
Date: February 6, 1991

Jacob H. Fischman, Esq., for the protester.
Thomas H. Hillin, Esq., Defense Logistics Agency, for the agency.
James Vickers, Esq. and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of invitation for bids for indefinite quantity contract was proper when agency determines it no longer has requirement for items.

DECISION

California Inflatables Co., Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. DLA730-90-B-4033, by the Defense Logistics Agency. California contends that even though the agency has no current or anticipated needs for the items during the contract term it should still be awarded the "requirement type" contract.

We deny the protest.

The IFB was issued on May 1, 1990, for collapsible fabric drinking water tanks. The solicitation contemplated an indefinite quantity contract for 1 year with 2 option years. Two bids were received on the bid opening date of July 10. California was the low bidder. Subsequently, the contracting officer canceled the solicitation because there were no anticipated requirements during the initial contract year.

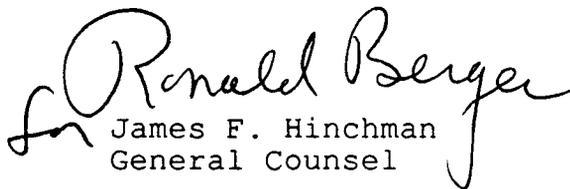
California argues that there was no compelling reason to cancel the IFB since under a contract award pursuant to the solicitation the government would not be obligated to purchase any tanks if in fact none was needed. The agency disagrees, stating that under the indefinite quantity type contract contemplated by the IFB it would be obligated to order a minimum of five tanks no matter what its actual needs.

Because of the potential adverse impact on the competitive system of canceling a solicitation after prices have been exposed, the agency must have a compelling reason for such action. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). Contracting officials have broad discretion to decide whether or not compelling circumstances for cancellation exist. Our Office will consider whether the exercise of that discretion was reasonable. The W.H. Smith Hardware Co., B-228127, Dec. 7, 1987, V87-2 CPD ¶ 556.

In our view, whether or not the agency would be obligated to purchase a minimum of five tanks if it made award to California, there is no requirement for the agency to award a contract for items for which it has no need. Since there is no dispute that the items are in fact not needed, that alone provides a proper basis for cancellation. FAR § 14.404-1(c)(3); Pneumatrek, Inc., B-225136, Feb. 24, 1987, 87-1 CPD ¶ 202.

Moreover, it is clear that the agency would be obligated to order a minimum of five tanks. The solicitation provides at clause I68 entitled "Indefinite Quantity" that the government will order "at least the quantity" of supplies designated as the "minimum." The following clause, I69, says that the government shall order a minimum "of five units for the first year." It is true, as the protester points out, that the solicitation also states at clause I63, "Delivery Order Limitation," that if less than five tanks are needed the government is not obligated to purchase nor is the contractor obligated to furnish the items. This provision refers only to a particular delivery order for less than five tanks; it has no impact on the overall obligation established in clauses I68 and I69 for ordering at least five tanks during the basic term of the contract. See FAR § 16.504, which states that an indefinite quantity contract requires that the government order and the contractor furnish "at least a stated minimum quantity."

The protest is denied.


James F. Hinchman
General Counsel