



Decision

Matter of: Best Foam Fabricators, Inc.

File: B-259905.3

Date: June 16, 1995

William E. Hughes III, Esq., Whyte, Hirschboeck, Dudek, for the protester.

Irwin Ansher, Esq., Department of the Treasury, for the agency.

Wm. David Hasfurther, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where agency terminated a contract for the convenience of the government, its decision to cancel the solicitation and obtain the items covered by the terminated contract from the organization designated by the Committee for Purchase from the Blind and Other Severely Handicapped (Committee) rather than another offeror under the solicitation was reasonable in view of the priority given in Federal Acquisition Regulation § 8.001 to obtaining supplies from Committee procurement lists over commercial sources.

DECISION

Best Foam Fabricators, Inc. protests its failure to receive the award under request for proposals (RFP) No. USM-94-91, issued by the United States Mint, Department of the Treasury, for laminated foam inserts for use in 5-piece coin sets.

We deny the protest.

The RFP required offerors to submit by April 1, 1994, proposals for supplying the agency's estimated requirements for laminated foam inserts. The agency originally had intended to award a 3-year contract, but it decided to award a contract with a 1-year base period with 2 option years when the National Industries for the Severely Handicapped (NISH) advised the agency that consideration was being given to adding the foam inserts to the procurement list developed under the provisions of the Javits-Wagner-O'Day Act (Act), 41 U.S.C. §§ 46-48c (1988 and Supp. V 1993). Under the Act, once a commodity or service has been added to the list by

the Committee for Purchase from the Blind and Other Severely Handicapped (Committee), contracting agencies are required to procure the commodity or service directly from the workshops for blind or other severely handicapped individuals affiliated with NISH. Federal Acquisition Regulation (FAR) Subpart 8.7. Because the process of adding the foam inserts to the list was proceeding slowly, the agency wanted to maintain all options available for obtaining the foam inserts.

Prior to award, the Committee advised the agency by letter of December 12, 1994, that the foam inserts would be added to the procurement list on January 9, 1995, and that contracts awarded, or any contract options exercised, prior to that date would not be affected by the addition to the procurement list. Goodwill Industries was to be responsible for meeting the agency's requirements for the item.

Award of a contract under the RFP was made to Design Pak on December 29, after its proposal was determined to offer the best value to the government of all proposals received. Best Foam protested that award, and Design Pak alleged that it had made a mistake in pricing its proposal. After the agency determined that correction could not be permitted, Design Pak withdrew its allegation. Subsequently, the agency terminated Design Pak's contract for the convenience of the government on January 30 and canceled the RFP after determining that its requirements could properly be supplied by Goodwill Industries. Award was made to Goodwill Industries.

Best Foam contends that, since the agency obviously intended to make an award under the RFP and since by terminating the Design Pak award it apparently conceded that Design Pak's proposal did not represent the best value to the government and Best Foam's did, the agency was remiss in canceling the RFP and in making award to Goodwill Industries, which had not competed under the RFP.

We find no basis to object to the cancellation of the RFP. While Best Foam objects to the validity of the award to Design Pak and contends that once the award was terminated the agency was obligated to make award to Best Foam under the RFP, the cancellation of an RFP is not legally objectionable where the agency has a reasonable basis for canceling. CFM Equip. Co., B-251344, Mar. 31, 1993, 93-1 CPD ¶ 280. We have recognized that a reasonable basis for cancellation exists when the agency can satisfy its needs through purchasing under the Act. See Microform Inc., B-246253, Nov. 13, 1991, 91-2 CPD ¶ 460, aff'd, Microform Inc.--Recon., B-246253.2, Mar. 31, 1992, 92-1 CPD ¶ 338. Here, the foam inserts became available, after the initial contract award, through the NISH process, and FAR § 8.001(a)

states that purchases from Committee procurement lists are to be given priority over purchases from commercial sources. Accordingly, once the original award was terminated, the agency was under no obligation to award another contract under the RFP, but instead could proceed in accordance with the priority listing in FAR § 8.001(a). Thus, we view the cancellation here as reasonable.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel