



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

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*Released*

B-188404

MAY 31 1978

The Honorable  
The Secretary of Defense

Dear Mr. Secretary:

Further reference is made to our decision in the matter of Switlik Parachute Company, Inc., B-188404, July 20, 1977, 77-2 CPD 38, in which we recommended that contract No. DSA100-77-C-1176 with Lite Industries, Inc. (Lite) be terminated for the convenience of the Government. Our decision found the invitation for bids (IFB), under which award to Lite was made, to be defective for not clearly stating whether the procurement was limited to Qualified Products List (QPL) items in accordance with the specifications or whether waiver of the QPL requirement was intended. By letter of September 7, 1977, the Defense Logistics Agency agreed that the IFB was defective but declined to terminate the contract with Lite because of its belief that the procurement was urgent since failure to receive the garments in a timely fashion would seriously affect the Air Force's mission.

By letter of November 10, 1977, we indicated that any disagreement the Defense Logistics Agency may have had regarding our termination for convenience recommendation should have been handled by requesting reconsideration of our decision shortly after our decision was issued. We also indicated our belief that the failure to promptly supply connectors to Lite and the resultant delay in obtaining first article testing were inconsistent with the two urgency determinations (for awarding the contract while a protest was pending and for not terminating the contract as we had recommended) made by the Defense Logistics Agency. We also questioned the reasons given for continuing the contract with Lite rather than terminating as recommended and procuring from Kings Point, a proven QPL source for which

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first article testing could have been waived. Finally, we solicited the views of the Defense Logistics Agency on why our Office should not take exception to payments made to Lite in excess of the termination for convenience costs as of the date of our decision in Switlik Parachute Company, Inc., supra.

In its response of December 13, 1977, the Defense Logistics Agency indicated that, at the time of the award to Lite, the Defense Personnel Support Center did not know whether Lite would need Government loaned connectors or that there would be any delay in furnishing the connectors once they had been requested by Lite. It was also indicated that, although the delay in furnishing connectors had initially delayed first article testing, no further delays were foreseen at the time the Defense Logistics Agency was considering our recommendation to terminate the contract with Lite. Regarding the determination not to terminate and resolicit as we had recommended, it was explained that the Defense Logistics Agency did not believe the urgency of the Air Force's requirements justified a sole-source procurement from King's Point and that the estimated 4-month delay in resoliciting by formal advertising would result in the unacceptable choice of the Air Force grounding its aircraft or exposing its pilots to potential in-flight hazards.

In its December 13, 1977, letter, the Defense Logistics Agency also agreed with our determination in Switlik that the IFB was defective. However, the Defense Logistics Agency took issue with our recommendation that the contract with Lite be terminated for the convenience of the Government because of the possibility that Switlik Parachute Company and other bidders might have been prejudiced by the defective IFB and, therefore, were not treated fairly and equally. The Defense Logistics Agency also indicated that it decided not to request reconsideration of the Switlik decision because of the fact that our decision was based on precedent and because of its view that the defect in the IFB was not so severe as to justify termination of the contract.

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In the instant procurement, it was, and still is, our opinion that the integrity of the competitive procurement system had been compromised by the defective IFB. At that point in time (July 20, 1977), we were of the opinion that upon balancing the potential prejudice to bidders, the urgency of the procurement, and the extent of performance, immediate corrective action in the form of termination for convenience was warranted.

Moreover, we wish to comment upon the method utilized in order to avoid implementing our termination recommendation. Under our Bid Protest Procedures, 4 C.F.R. § 20.9 (1977), the Defense Logistics Agency could have properly requested reconsideration of the Switlik decision not later than 10 days after the basis for reconsideration was known or should have been known. In this connection, we note that a request for reconsideration could have been limited to the remedial action recommended on the same bases cited as justifying the determination not to terminate. The September 7, 1977, notification that the Defense Logistics Agency did not intend to implement our termination recommendation was, therefore, untimely to serve as a request for reconsideration and represents, in our opinion, an abuse of the bid protest process. Such actions serve as a threat to the integrity of the Government's competitive bid system. Neither the substantive arguments disagreeing with our recommendation nor the fact that the Defense Logistics Agency believed that a request for reconsideration would be futile since our original decision was based upon precedent serves as justification for continuance of performance under the contract with Lite in the face of our recommendation that the contract be terminated.


We note that although the Defense Logistics Agency declined to follow our decision, the following remedial actions have been or will be taken to correct the defects which were found in the solicitation which was the subject of Switlik:

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1. the Labor Surplus Area set-aside portion of the solicitation was not awarded to Lite even though Lite was in line for award;
2. the option under the Lite contract will not be exercised; and
3. the Labor Surplus Area set-aside portion and 794 additional units will be resolicited on a non-QPL basis and the solicitation will clearly notify bidders that the QPL requirement is inapplicable as recommended in Switlik.

However, we do not believe that the above remedial actions are sufficient to correct the deficiencies found in the subject procurement. Accordingly, unless immediate action is taken to terminate the contract for the convenience of the Government, we will be forced to take exception to any payments made to Lite in excess of the termination for convenience costs as of the date of this letter. A copy of this letter is being transmitted by letters of today to the congressional committees named in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970).

Sincerely yours,

igned) Walter D. Starks

Comptroller General  
of the United States