



## Decision

**Matter of:** Alaska Structures, Inc.

**File:** B-402648.3

**Date:** August 10, 2010

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Richard J. Conway, Esq., and Pablo A. Nichols, Esq., Dickstein Shapiro LLP, for the protester.

Paul F. Khoury, Esq., and Brian G. Walsh, Esq., Wiley Rein LLP, for California Industrial Facilities Resources, Inc., the intervenor.

Tina M. Pixler, Esq., and Scott A. Johnson, Esq., Department of the Army, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging an agency's corrective action decision to terminate an order issued to another firm and recompete its remaining requirements under relaxed specifications is denied, where the agency reasonably determined that the solicitation materially overstated the agency's requirements and that recompeting under specifications that reflected its actual needs would lead to enhanced competition.

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### DECISION

Alaska Structures, Inc. (ASI), of Anchorage, Alaska, protests the corrective action taken by the Department of the Army, Army Materiel Command under request for quotations (RFQ) No. 443359 with respect to an order for shelters and related items issued to California Industrial Facilities Resources, Inc. (doing business as CAMSS Shelters (CAMSS)) under that firm's General Service Administration's (GSA) Federal Supply Schedule (FSS) contract. In response to ASI's earlier protest, the agency terminated the order issued to CAMSS and will recompete the items that had not yet been delivered. ASI contends that the agency should order the remaining items from ASI.

We deny the protest.

The RFQ, issued under Federal Acquisition Regulation part 8.4 procedures, sought shelters and related equipment on a brand name or equal basis for soldiers in Afghanistan. RFQ at 3. Salient characteristics were identified for the items. Vendors were informed that an order would be issued to the firm submitting the lowest-priced, technically-acceptable quotation. RFQ at 5.

The agency received quotations from three firms, including CAMSS and ASI. CAMSS's quotation was the lowest priced, and ASI's quotation was the second lowest priced. On March 19, 2010, the agency issued an order to CAMSS for the shelters, and on March 23, CAMSS shipped some of the shelters and equipment to Afghanistan. Contracting Officer's Statement at 2. The next day ASI protested to our Office, arguing that not all of CAMSS's quoted items were on the firm's FSS contract, and that two of CAMSS's proposed items did not satisfy the RFQ's salient requirements. Following notification of the protest, the agency issued a stop work order to CAMSS and no further items were shipped under the order.

After receiving the agency report responding to ASI's protest allegations, ASI filed a supplemental protest with our Office, arguing that CAMSS had not provided required test data demonstrating that its shelters met certain load requirements, and that CAMSS's quotation did not demonstrate compliance with the RFQ's salient characteristics. Approximately a week after receiving the protester's supplemental protest, the agency informed our Office that it would take corrective action. Specifically, the agency stated that it would terminate the order issued to CAMSS and recompute the items that had not yet been delivered. In response, we dismissed ASI's protests as academic. This protest challenging the agency's corrective action followed.

ASI argues that, because CAMSS's quotation was technically unacceptable, the agency should have issued an order to ASI (as the firm with the lowest-priced, technically acceptable quotation) for the items that had not yet been delivered.<sup>1</sup> In this regard, ASI contends that a recompetition would delay delivery of these "urgently needed" items and improperly provide CAMSS with a "second chance" to submit a technically acceptable quotation. Protester's Comments at 8.

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<sup>1</sup> ASI initially argued in its protest of the corrective action that the agency should be required to procure all of the solicited items from ASI, including those items delivered. In this regard, ASI complained that the Army had actually received the delivered items after it had issued a stop work order to CAMSS. The agency in its report disagreed that ASI should be entitled to an order for items that had already been delivered. In its comments, ASI limited its protest to the contention that the agency should issue an order to ASI for the items that had not yet been delivered. Protester's Comments at 13.

The agency responds that, in reviewing ASI's earlier protest, it concluded that the salient characteristics identified in the solicitation materially overstated the agency's requirements by specifying ASI's brand name products. The agency also states that the CAMSS products that were shipped prior to the issuance of the stop work order were found to satisfy the agency's needs. Contracting Officer's Statement at 2. The agency contends that recompeting the remainder of its requirements under specifications that reflect the agency's actual minimum needs will increase competition and ensure that the agency receives the lowest possible price. Id.

In negotiated procurements, agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure fair and impartial competition. See MayaTech Corp., B-400491.4, B-400491.5, Feb. 25, 2009, 2009 CPD ¶ 55 at 3; Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 8. We will not object to the specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3. In this regard, we have found unobjectionable an agency's cancellation of a negotiated procurement after receiving proposals where the agency determined that the solicitation overstated the agency's requirements and the agency would seek enhanced competition by relaxing its requirements. See Robertson Leasing Corp., B-275152, Jan. 27, 1997, 97-1 CPD ¶ 49 at 3-4.

We find reasonable the agency's decision to relax its requirements to seek enhanced competition for the remaining items. Although ASI concludes that the agency has not proven that its needs will be met by the relaxed efforts, the fact that the agency has evaluated its needs, found that the awardee's products would meet its needs, and further determined that the awardee's products were not compliant with the solicitation's salient characteristics, is sufficient to demonstrate the reasonableness of the agency's actions here. Moreover, where, as here, an agency determines that a relaxed specification will both meet its needs and afford enhanced competition for the goods or services being acquired, we will not object to the relaxation. See Virginia Elec. and Power Co; Baltimore Gas & Elec. Co., B-285209, B-285209.2, Aug. 2, 2000, 2000 CPD ¶ 134 at 7-8 (the role of our Office in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in more restrictive specifications).

The protest is denied.

Lynn H. Gibson  
Acting General Counsel