

DOCUMENT RESUME

03313 - [A2373501]

[Reconsideration of Upholding of Protest against the Use of a Bid Evaluation Formula]. E-187872. August 22, 1977. 3 pp.

Decision re: Dyneteria, Inc.; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Department of the Air Force;
Southeastern Services, Inc.; Worldwide Services, Inc.
Authority: B-185605 (1976). B-187821 (1977). B-189280 (1977).
B-187720 (1977). 55 Comp. Gen. 231.

Reconsideration was requested of a decision which recommended that a contract with the protester be terminated if the low bid received upon resolicitation under revised evaluation criteria was more advantageous to the Government. The request for reconsideration failed to clearly demonstrate either errors of fact or law. A conference request in connection with the reconsideration was also denied, because no useful purpose would be served by holding it. (Author/SC)

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B. J. [unclear]
[unclear]

DECISION



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

FILE: B-187872

DATE: August 22, 1977

MATTER OF: Dyneteria, Inc. -- Reconsideration

DIGEST:

1. Where request for reconsideration of GAO decision fails to clearly demonstrate either errors of fact or law, decision is affirmed.
2. Conference request in connection with reconsideration of prior decision is denied, because no useful purpose would be served if conference were held.

Dyneteria, Inc. requests reconsideration of our decision in Southeastern Services, Inc., 56 Comp. Gen. _____, 77-1 CPD 390, in which we sustained protests filed by Southeastern Services, Inc., and Worldwide Services, Inc., regarding Department of the Air Force IFB F41612-77-C9001 for food services required at Sheppard AFB.

Our prior decision considered issues presented by the Air Force's use of a bid evaluation formula. The formula assumed that 20 percent of estimated meals would be subject to a downward price adjustment established by the bidder, while another 20 percent of the meals would be evaluated on the basis of an upward adjustment of the base bid price. Although we stated that "it is apparent that the 20 percent factor is far out of line with the actual meal experience at Sheppard AFB," our decision was founded upon our recognition that a 20 percent, or even a 10 percent, figure could never occur, because the adjustment applied only to meals served outside the 90 percent to 110 percent range, and the contract price was to be renegotiated for any month for which the number of meals served fell outside 80 percent to 120 percent of the Government's estimate. We concluded that the formula gave no assurance that any award would result in the lowest cost to the Government, and we recommended that the Government's requirements be resolicited under revised evaluation criteria. In doing so, we recommended that the award made to Dyneteria should be terminated if the low bid received upon resolicitation is more advantageous to the Government, applying the new criteria.

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By telegram on June 14, 1977, Dyneteria requested reconsideration, contending that our decision forced it to bid against itself, and complaining that no consideration was given to the fact that Dyneteria's price was lowest when evaluated against more realistic estimates. The telegram further stated that resolicitation could not possibly serve the best interests of the Government, and that further information would follow. Dyneteria's telegram also requested a conference in this matter.

By letter dated July 11, 1977, counsel for Dyneteria further asserts that the rejected evaluation criteria might bear a reasonable relationship to presently anticipated personnel levels because certain training functions at Webb AFB are scheduled to be transferred to Sheppard in the near future. Counsel also seeks to expand upon Dyneteria's complaint that the relief recommended was inappropriate, contending that in comparable circumstances in the past we have at most recommended only that contract options to extend the life of the contract not be exercised.

In our view, Dyneteria has failed to clearly demonstrate any error of fact or law, requiring that our prior decision be affirmed. Visor Builders, Inc., B-185605, July 22, 1976, 76-2 CPD 68; Ziegler, Inc., B-187821, June 17, 1977, 77-1 CPD 437. Counsel's argument that we should look to possible changed future needs at Sheppard fails to meet the basic objection in our prior decision that the evaluation scheme could never occur. Regarding Dyneteria's contention that it would be evaluated as low if corrected criteria were used, this possibility was considered and rejected in reaching our decision. We stated therein that "Any measure which incorporates more or less than the work to be contracted * * * does not obtain the benefits of full and free competition required by the procurement statutes." Referring to our decision in Edward B. Friel, Inc., 55 Comp. Gen. 231 (1975), 75-2 CPD 164, we concluded that "Revised evaluation criteria may not be used after bid opening to justify award, because bidders have not competed on that basis."

Counsel argues that we have in the past refused to recommend termination of a contract, where a case was considered under the significant issue exception to our

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timeliness rules. The Government has the right to and may terminate a contract for its convenience. Whether it should do so in any particular instance to correct a defective procurement must depend upon a number of considerations, including but not limited to its assessment of the seriousness of the defect, the circumstances surrounding the making of the award, and the impact which allowing the award to stand will have on the competitive procurement process. Our view of the gravity of the problem presented through the use, on an Air Force-wide basis, of mathematically impossible evaluation criteria was reflected in our recommendation of a resolicitation. Contrary to Dyneteria's expressed belief, we carefully considered the impact which our recommendation would have, before our decision was reached, including the fairness of such a recommendation to Dyneteria. We do not agree that Dyneteria is prejudiced by our recommendation.

Furthermore, we do not agree that a firm in the position of Dyneteria is effectively prevented from rebidding in such circumstances. As our decision indicated, the evaluation criteria used in making award were defective. We would anticipate that rebidding and evaluation on the basis of appropriate revised criteria would result in an evaluated price different from that arrived at in making award.

In view of the foregoing, Dyneteria's conference request is denied. No useful purpose would be served by, and the case can be resolved without, holding a conference. The Volpe Construction Co., B-187230, August 8, 1977, 77-1 CPD _____; International Business Machines Corporation, B-187720, August 9, 1977, 77-1 CPD _____.

Accordingly, our decision of June 3, 1977 is affirmed.


Acting Comptroller General
of the United States