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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: 8-195956.4

Protests Involving Army Contract Award

AUG 15 1980

The Honorable John ~~M. Porter~~ Porter
Member, United States House of
Representatives
Evanston Civic Center
2100 Ridge Avenue
Evanston, Illinois 60204

Dear Mr. Porter:

This is in reply to your request of July 16, 1980 in which you asked that we respond to certain reservations expressed by Bernard Padgett, president of Warner-Serbison-Padgett (WSP), regarding a procurement of racquetball courts by the Army Corps of Engineers. *PN*
This procurement involved a solicitation, a cancellation of that solicitation and a resolicitation before award was made to World Courts, Inc. on June 27, 1980. It also involved three protests. First, WSP's protest of a proposed award to Reed Export, Inc. (Reed) was sustained in our decision of January 23, 1980. Reed argued that WSP's bid contained infirmities similar to its own and that if Reed could not receive the award, neither should WSP. Reed then protested the proposed award of a contract to WSP. However, Reed's protest was withdrawn without a decision by us when the initial solicitation was canceled and the requirement was resolicited with amended specifications. In a third protest, WSP objected to the cancellation. This protest resulted in our decision of July 21, 1980, in which we held that the Army had an adequate basis for its cancellation of the first solicitation. Copies of our two decisions are enclosed. *AGC00305*

The record on these protests was thoroughly reviewed and we found no evidence to support WSP's belief that it was "intentionally bypassed" by the Corps of Engineers. WSP's first protest was sustained because Reed's low bid was not responsive to the solicitation and several procedural deficiencies in the procurement were pointed out to the Army. No decision was rendered on Reed's protest because it was withdrawn before the record was developed.



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B-195956.4

and because the original solicitation was canceled. In our decision denying WHP's protest of the cancellation, we pointed out that contracting officers have broad discretion in deciding whether to cancel a solicitation and that we will not overturn such a decision unless there is an abuse of discretion. In this case, we found no abuse of discretion because an adequate basis for cancellation existed.

We believe Mr. Padgett places undue significance upon the Army's award of the contract before our decision on WHP's second protest. Defense Acquisition Regulation § 2-407.8 permits an agency to award a contract pending our decision on a protest when the items are urgently required, delivery will be unduly delayed, or a prompt award will otherwise be advantageous to the Government. Such a determination must be approved at an appropriate level above the contracting officer and in accordance with Departmental procedures. In this case, the Deputy Assistant Secretary of the Army (Acquisition) granted his approval before the early award was made. Such approvals are not uncommon, especially where, as here, previous protests have held up a procurement for many months.

Sincerely yours,

Harry R. Van Cleave

For Milton J. Socolar
General Counsel

Enclosures