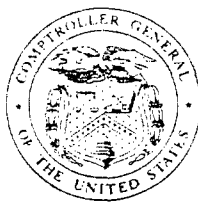


14015 PK-1
Mr. Phillips

DECISION



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

FILE: B-197269

DATE: June 11, 1980

MATTER OF: Rogow & Bernstein

DIGEST:

1. Question of whether contract should be terminated for default is matter of contract administration for consideration under disputes clause of contract and not for resolution under Bid Protest Procedures.
2. Question of whether design offered by firm awarded procurement contract is "similar" to design offered by defaulted contractor under original contract is for consideration by contracting agency under disputes clause procedures of original contract in connection with any charges that may be made by Government for excess costs in purchasing "similar" services or supplies. Prior decisions modified.
3. DAR § 1-1003.1, pertaining to advertising procurements in Commerce Business Daily, would not have to be followed in procurement for account of defaulted contractor.

Rogow & Bernstein (Rogow) ^{Against Contract} protests the termination for default of contract No. DACW09-79-C-0020 for the design of displays for a visitors center and the procurement from Universal Exhibits under request for proposals No. DACW09-80-R-0006.

According to the contracting officer, Universal Exhibits was the second most qualified concern appearing on the list of six firms interviewed and evaluated prior to award of the contract to Rogow. Accordingly, when Rogow was defaulted, Universal Exhibits alone was requested to submit a proposal for the work.

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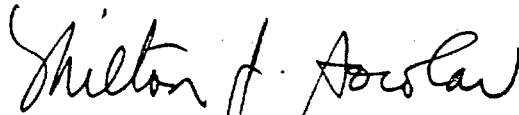
Essentially, it is Rogow's position that the replacement contract should have been let to competition as a new procurement and advertised in the Commerce Business Daily under the requirement of Defense Acquisition Regulation (DAR) § 1-1003.1 (1976 ed.).

The contracting officer argues that Rogow's protest is untimely under the Bid Protest Procedures, 4 C.F.R. part 20 (1980), since Rogow did not protest within 10 working days of receipt of the notice of default termination. However, we have held that the question of whether a contract should be terminated for default is a matter of contract administration for consideration under the disputes clause of the contract and not for resolution under the Bid Protest Procedures, which are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory or other legal requirements. Central Air Service, B-195517, August 20, 1979, 79-2 CPD 136. Therefore, to the extent that Rogow may be protesting the termination of the contract, it is not for our consideration and the failure to protest within 10 working days of the default notice is not relevant. There is no disagreement that the protest against the reprocurement from Universal Exhibits is timely.

The default clause of Rogow's contract provides that in the event of termination for default the Government may procure supplies or services "similar" to those terminated and the contractor shall be liable for any excess costs for such "similar" supplies or services. In this regard, our Office has recognized that where a procurement is for the account of the defaulted contractor, i.e., a repurchase or reprocurement, statutes and regulations concerning procurements by the Government are not applicable. Decatur-Wayne, Inc., B-181366, October 9, 1974, 74-2 CPD 200; Aerospace America, Inc., 54 Comp. Gen. 161 (1974), 74-2 CPD 130. Thus, DAR § 1-1003.1, pertaining to advertising procurements in the Commerce Business Daily, would not have to be followed in such a reprocurement. Also, in this regard, we have held that award of a reprocurement contract to the next qualified offeror on the original solicitation is a recognized method of reprocurement. Hemet Valley Flying Service, Inc., 57 Comp. Gen. 703 (1978), 78-2 CPD 117.

However, it is Rogow's contention that since Universal Exhibits will furnish a different design than Rogow would have furnished, the new solicitation is so dissimilar to the original contract as to constitute a new procurement. Thus, the determinative issue in the present case is whether the design to be furnished by Universal Exhibits, even though it will be pursuant to the same specifications and requirements, is "similar" to that called for by the defaulted contract. However, the determination of whether the design by Universal Designs is "similar" is for consideration by the contracting agency under the Rogow contract disputes clause procedures in connection with any charges that may be made by the Government for excess costs incurred in purchasing "similar" services or supplies. Inforex, Inc., and Four-Phase Systems, Inc., B-178892, April 2, 1974, 74-1 CPD 159.

Accordingly, the protest is denied. To the extent that our holding in Steelship Corporation, B-186937, March 10, 1977, 77-1 CPD 177, is inconsistent with our holding in the present case, it is modified.



For The Comptroller General
of the United States