

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**Cohen
PL-II
28998**FILE:** B-213932**DATE:** August 2, 1984**MATTER OF:** Howard R. Lane, FAIA Associates**DIGEST:**

Contracting agencies have broad discretion in determining when it is appropriate to cancel a procurement conducted under Brooks Act procedures, and may do so by establishing a reasonable basis for the cancellation. Where the scope of the procurement has dramatically expanded since the evaluation and selection of a prospective contractor, a reasonable basis for cancellation exists.

Howard R. Lane, FAIA Associates, protests the cancellation of project No. 644-012 by the Veterans Administration (VA). The project encompasses architectural and engineering services relating to a clinical and administration building at the VA Medical Center in Phoenix, Arizona. We deny the protest.

In May 1980, the VA selected Lane as the most highly qualified firm for the project under the special procedures prescribed in the Brooks Act for the procurement of professional architect-engineer (A-E) services. 41 U.S.C. § 541 et seq. (1982). The Brooks Act requires federal agencies to select contractors on the basis of demonstrated competence and qualifications; the procedures do not include price competition. Once a firm is selected as the most highly qualified to provide the services, the agency is required to negotiate a contract at a fair and reasonable level of compensation. The VA did not negotiate a contract with Lane at the time of its selection, however, because the

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precise scope of the project was in a state of flux. More than 3 years later, the VA canceled the project because its ultimate scope vastly exceeded the scope contemplated at the time of Lane's selection.

Lane contends that the cancellation was improper essentially because the project had no defined scope at the time of the selection and, consequently, the scope cannot be said to have changed during the ensuing 3 years. Lane asserts that it was selected on the basis of its broad experience and qualifications without any consideration of the intended scope of the project, and therefore the increase in scope should not affect its selection.

The VA initially conceived the clinical and administrative building project as a new modern facility that was to house eight functions such as the mental hygiene clinic, alcohol rehabilitation clinic, and supply and fiscal services. The estimated cost of the project was to be \$4,549,000.

In accordance with the Brooks Act requirement to announce publicly all requirements for A-E services, the VA published the following advertisement for the project in the Commerce Business Daily (CBD) on April 3, 1980:

"HEALTH CARE FACILITIES PLANNING AND DESIGN. Architect or architect/engineer firm to provide professional services which include architectural and engineering services for advance planning of projects that may include but are not limited to Clinical/Administration Building (Mental Health/Day Treatment), VAMC Phoenix, Arizona. Required services will include physical and functional surveys, study and analysis of VA furnished data and standards including VA space planning criteria, etc., as required to culminate in program and space requirements, conceptual design, preliminary plans including all appropriate engineering disciplines and firm estimate of construction cost."

Lane and 18 other A-E firms responded to this advertisement with the submission of Statements of Qualifications. The VA selected Lane and two other firms to be interviewed for the project, and ultimately deemed Lane

to be the most highly qualified firm for the project. Lane was informed of its selection by letter of August 6, 1980. The letter also disclosed that the VA would not proceed into contract negotiation until the scope of the project solidified.

Over the ensuing 3-1/2 years, the general scope for the project gradually increased, but was not finalized. By August of 1983, the project had grown to include eleven functions in 40,000 gross square feet of new space at a cost of \$16,584,000. In October 1983, as a result of a new survey of its needs, the VA determined that its requirements were dramatically greater than it had initially thought. The new scope encompassed a new building of four stories and a basement and two additional floors on an existing structure. The 183,000 gross square foot of new construction would house 23 functions, including such major functions as surgery, medicine, and nursing, at an estimated cost of \$53,500,000. Based on the disparity between the scope conceived at the time of the selection of Lane and the ultimate scope of the project, the VA canceled the procurement and plans to solicit the requirement for A-E services.

Lane believes the cancellation was improper because the project did not have a specific scope at the time of Lane's selection and, consequently, the scope cannot be said to have changed since then. In this regard, Lane asserts that the CBD notice did not define a specific project with a certain scope, nor could it have done so since the services solicited included surveys, analysis and planning, which was to culminate in program and space requirements, conceptual design and preliminary plans. Lane points out that the evaluation board did not focus on a specific building, estimated cost or square footage, but selected Lane on the basis of its broad experience and qualifications on the design of health care facilities. In Lane's view, it was selected not "to design and plan a predetermined specific building, but rather to survey and plan facilities to meet the needs of the VA . . . when these needs were ascertained by Lane in conjunction with the VA." In sum, the project never had a specific scope and would not have one until the early stages of the contract. Therefore, there was no reason for the VA to cancel the procurement.

Before turning to Lane's specific contentions, it is necessary to determine the standard against which the decision to cancel a Brooks Act procurement is to be measured. Neither the Act nor regulations promulgated thereunder provide any guidance concerning cancellations, and we are unaware of any caselaw concerning this issue. Generally, however, we recognize broad agency discretion to cancel solicitations and, except for post-bid opening cancellations of advertised solicitations, (which are held to a higher standard because of the effect on the integrity of the bidding system of resolicitation after exposure of bids), an agency need only establish a reasonable basis for the cancellation. See Francis Technology, Inc., B-205278.2, Aug. 29, 1983, 83-2 CPD ¶ 265.

Although Brooks Act procedures are fundamentally different from traditional procurement procedures, we believe agencies should be afforded the same discretion to cancel as in other types of procurements. We can conceive of no harm to the procurement system or to competing firms in allowing Brooks Act procurements to be canceled when the agency establishes a reasonable basis therefor.

We find the VA had a reasonable basis for the cancellation. First, we believe that Lane is somewhat misguided in its assertion that it was Lane's responsibility to ascertain, in conjunction with the VA, the general scope of the project. It is evident from the record that setting the general parameters of the project (e.g., determining which and how many functional units were to be housed in the new facility) was the responsibility of the VA. The VA repeatedly disclosed to Lane that negotiations would not ensue until the VA set the general scope and criteria for the project; Lane acquiesced in this arrangement. Thus, although Lane certainly was to perform design, conceptual development and planning function if a contract were negotiated, it was the understanding of the parties that the determination of general project scope remained within the purview of the VA. We reject Lane's argument that the general scope could not be determined until Lane did so as part of its contract.

Second, we disagree that at the time of Lane's selection the project had no scope or definition. Although a specific scope may not have been made known to the

competing firms, a specific scope did exist as indicated by internal VA documents. That scope, as noted, encompassed a new two-story structure housing eight functions, at an estimated cost of \$4,549,000. The evaluation board was aware of the specific scope of the project at the time it was considering the performance and qualifications of Lane and the other 18 firms that responded to the CBD notice. Although the former chairman of the evaluation board, now in private practice, states that project cost or number of functions were never discussed during firm interviews, we believe some preliminary determinations were, or should have been, made concerning capability to perform a project of the scope envisioned at the time. As the VA points out, the qualifications of firms cannot be evaluated in the abstract or in isolation, but must be analyzed with some consideration of the specific needs of the agency. In this regard, both the Federal Procurement Regulations and the Veterans Administration Procurement Regulations require evaluation boards to consider a firm's qualifications and record as they apply to the project or purpose of the selection. See Federal Procurement Regulations, 41 C.F.R. § 1-4.1004-3(b) (1982); Veterans Administration Procurement Regulations, 41 C.F.R. § 8-4.1004-3 (1982).

The VA now asserts that it cannot determine with certainty that the ranking of firms would have been the same had the evaluation occurred with the knowledge of the dramatically expanded scope. The VA believes the increase in magnitude and complexity may very well change the way in which the relative qualifications (e.g. size and staffing) of the firms are viewed. Moreover, in the VA's view, the new scope of the project contains substantial medical design not present in the initial scope. For example, the new scope includes the planning and design of an intensive care ward, which involves special capabilities not evaluated during selection process. We believe the VA's concerns are valid. In view of the ten-fold increase in estimated cost, the quadrupling of the square footage, and the addition of more complicated medical functions, we believe the VA had a reasonable basis for the cancellation.

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The protest is denied.

for Milton J. Fowler
Comptroller General
of the United States