

Westfall

DECISION



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

FILE: B-221502.3

DATE: March 24, 1986

MATTER OF: James M. Carroll--Reconsideration

DIGEST:

1. Lack of funding provides a reasonable basis for cancellation of a solicitation.
2. Where protester alleges that agency canceled a solicitation in order to avoid responding to his protest against solicitation improprieties but presents no evidence in support of these allegations, protester has not proved his case.
3. Protester is not entitled to reimbursement of costs of pursuing his protest where protest is not sustained.

James M. Carroll requests reconsideration of our dismissal of his protest under Department of Transportation (DOT) request for proposals (RFP) No. DTOS59-86-R-00005. We dismissed Mr. Carroll's protest after the agency canceled the RFP. The protester argues that we did not have authority under our Bid Protest Regulations, 4 C.F.R. part 21 (1985), to dismiss his protest as academic. Mr. Carroll further contends that the agency canceled the solicitation in order to avoid responding to his protest and asks that our Office require proof from the agency that it had a valid basis for the cancellation. The protester also seeks reimbursement for the costs of pursuing his protest and asks that we impose restrictions on the agency with regard to future solicitations for similar requirements.

We deny the request for reconsideration and the claim for costs of filing the protest.

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On September 5, 1985, DOT issued the subject RFP for development and implementation of a 3-day training program in labor-management relations for its middle managers. After initial proposals had been received, the agency amended the solicitation to require that each offeror provide a minimum of three to five instructors. Offerors were also asked to include cost estimates for travel and per diem in their price proposals.

The protester complained that the requirement for three to five instructors was unnecessary to assure successful completion of the project and was, therefore, unduly restrictive of competition. The protester argued that the amendment regarding travel costs favored offerors located in the Washington, D.C., area (where most of the training sessions were to be held) and that this change and the requirement for multiple instructors were intended to eliminate him from the competition. The protester maintained that the agency should award the contract based on the initial proposals.

We dismissed the protest as academic after DOT reported that various administrations within DOT had withdrawn their participation in all scheduled labor-management relations training sessions due to budgetary considerations, and that, as a consequence, the RFP in question had been canceled.

Initially, the protester argues that there is nothing in section 21.3(f) of our regulations, 4 C.F.R. 21.3(f), cited in our dismissal notice, permitting this Office to dismiss a protest as academic. Section 21.3(f) provides that a protest may be dismissed, if among other things, "it is otherwise not for consideration by the General Accounting Office." We have held that cancellation of a challenged solicitation renders the protest academic and not "otherwise" for our consideration under 4 C.F.R. § 21.3(f). Earth Resources Consultants, Inc.--Request for Reconsideration, B-220559.2, Nov. 26, 1985, 85-2 CPD ¶ 680. The dismissal was proper pursuant to 4 C.F.R. § 21.3(f).

The protester asserts that he has established a prima facie case that the agency violated applicable procurement regulations in amending the RFP and contends that the agency should be required to present evidence in rebuttal despite its cancellation of the solicitation.

In a negotiated procurement, as here, the contracting officer has broad powers to decide whether to cancel a solicitation and need only establish a reasonable (as distinguished from compelling) basis for the cancellation. Dynalectron Corp., B-216201, May 10, 1985, 85-1 CPD ¶ 525. DOT indicates that the solicitation was canceled due to "budget considerations," which we understand to mean that funding was unavailable. Lack of funding for a procurement clearly provides a reasonable basis for cancellation. Francis Technology, Inc., B-205278.2, Aug. 29, 1983, 83-2 CPD ¶ 265.

The protester does not challenge the agency's authority to cancel a solicitation where funding is unavailable, but rather demands proof that funding was indeed lacking in this instance. The protester contends that DOT's ground for cancellation was a pretext and alleges that the solicitation in fact was canceled to cover up the improprieties to which he originally objected.

The protester, however, has presented no evidence in support of these allegations. He speculates that the agency canceled the solicitation after he had filed his protest in order to avoid responding to the protest. A protester has the burden of proving its case, and we will not attribute improper motives to procurement personnel on the basis of inference or supposition. Business Communications Systems, Inc., B-218619, July 29, 1985, 85-2 CPD ¶ 103. Here, there is nothing in the record to indicate that the cancellation was for a reason other than that stated by DOT.

The protester requests that we order the agency to refrain from contracting with any of the original offerors under the RFP for training services similar to those outlined in the original RFP and obtain our approval before it contracts in the future for such services. Since the agency properly canceled the solicitation due to a lack of available funding, we see no reason why it should be precluded from resoliciting the services if funding becomes available at some point in the future. Moreover, we consider protests against specific procurement actions and not allegations of anticipated future improprieties. Systems Engineering International Inc., B-218016, Feb. 7, 1985, 85-1 CPD ¶ 164.

If the agency does resolicit the services and the protester believes that he is improperly excluded from the competition, he may file a new protest in accordance with our protest regulations, 4 C.F.R. part 21. Anvan Realty & Management Co., B-214295, May 22, 1984, 84-1 CPD ¶ 548.

Further, in response to the protester's request that we require the agency to notify him of any future solicitations which it plans to issue for labor relations or employee relations training, the protester should ask the agency to add his name to the solicitation mailing list.

Finally, the protester claims the costs of filing his protest. Our regulations provide for the recovery of costs only where a protest is found to have merit. 4 C.F.R. § 21.6(d). Since we have made no such finding here, the claim is denied. Business Communications Systems, Inc., B-218619, supra.

We deny the request for reconsideration and the claim.

for Seymour Efron
Harry R. Van Cleave
General Counsel