

DECISION

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

FILE: B-221866

DATE: May 21, 1986

MATTER OF: Dixie Box & Crating

DIGEST:

1. Under General Accounting Office (GAO) Bid Protest Regulations, a protest may be dismissed where the protester fails to furnish a copy of the protest to the contracting officer within 1-day after the protest is filed with GAO. Dismissal is not warranted where, as here, the contracting officer had actual knowledge of the grounds which formed the basis of the protest at the time the protest was filed and the protester could have refiled the protest timely if the protest was dismissed for failure to furnish a copy to the contracting officer.
2. The availability of government-furnished equipment significantly alters the resources available for use by commercial offerors in performing services and changes the basis upon which offerors compute their prices, so that cancellation of the solicitation issued pursuant to an Office of Management and Budget Circular A-76 cost comparison is appropriate.

Dixie Box & Crating protests the cancellation of request for proposals (RFP) No. N00189-84-R-0049, issued by the Norfolk Naval Supply Center as a small business set aside for heavy packing and crating services. Dixie contends that there was no justification for the cancellation. We deny the protest.

The solicitation was issued in March 1984 pursuant to an Office of Management and Budget (OMB) Circular A-76 cost comparison. Three proposals were received, including one from Dixie, by the amended closing date of May 15. One of these offers was excluded from the competition because the offeror was determined to be other than a small business.

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On October 2, 1985,^{1/} after the remaining proposals were evaluated, but before best and final offers were due, the Chief of Naval Operations (CNO) notified the Supply Center of a change in Navy policy regarding cost comparisons. The CNO directed that all Navy cost comparison solicitations should provide prospective contractors the opportunity to use existing government-furnished equipment (GFE) in the performance of the commercial activity undergoing cost comparison. The CNO's October 2 message stated that it "applies to all CA [commercial activity] cost comparisons that have not had a bid opening or announcement of results."

After some internal discussion, the contracting officer determined that the new policy applied to the heavy packing and crating solicitation and on December 23, she informed the two remaining offerors that the solicitation was canceled. On December 26, Dixie protested the cancellation to the Navy. By letter of February 7, the contracting officer denied the protest and informed Dixie that the cancellation was required by the CNO and that the solicitation would be reissued with provisions for GFE. Dixie protested the cancellation to this Office on February 14.

The Navy argues that we should dismiss the protest because Dixie failed to comply with section 21.1(d) of our Bid Protest Regulations which requires that a copy of the protest be furnished to the contracting officer within 1-day after the protest is filed with our Office. 4 C.F.R. § 21.1(d) (1985). Although the protester maintains that it sent a copy of the protest to the contracting officer on February 13, the Navy did not receive a copy of the protest until February 26, 7 working days after Dixie filed its protest with our Office.

^{1/} The significant delay was caused by a dispute between the Navy and the Small Business Administration (SBA) regarding the applicability of SBA's Certificate of Competency procedures to the A-76 solicitation prior to the opening of the government estimate and by the Navy's discovery that major changes needed to be made in the solicitation due to an inaccurate work volume estimate.

The record indicates, however, that Dixie initially pursued its protest with the Navy and, although the contracting officer may not have timely received a copy of the submission filed with our Office, she had actual knowledge of the grounds which formed the basis for Dixie's protest at the time the protest was filed with our Office. See Motorola Inc.--Reconsideration, B-218888.2, June 24, 1985, 85-1 CPD ¶ 719. Moreover, the protester apparently learned on February 13 (the date Dixie sent its protest to our Office), that its agency level protest was denied and, while Dixie's protest was filed on February 14, the protester had until February 28 to file its protest with our Office. 4 C.F.R. § 21.2(a)(3). Consequently, Dixie could have refiled its protest on February 28 and also complied with the 1-day requirement even if we had dismissed the February 14 protest. Thus, a dismissal in these circumstances would have constituted a technicality which would not have served a useful purpose. Environmental Systems Research Institute, B-219797, Oct. 23, 1985, 85-2 CPD ¶ 449. We therefore will consider the merits of Dixie's protest.

The Navy maintains that cancellation was necessary because the CNO required, in the interest of increased competition, that cost comparison solicitations provide for the use of GFE and that this would substantially change the solicitation requirements.

Dixie argues that the October 2 CNO message did not apply to this procurement, since, by its own terms, that message only applies to cost comparison solicitations under which bids have not been opened or results announced while here, according to the protester, there has been a "bid opening." Dixie also argues that the cost of the additional GFE only amounts to 5 percent of the total contract price and this reduction in cost under the new solicitation will not increase competition.

With respect to the cancellation of a negotiated procurement, the contracting officer is clothed with broad powers in deciding whether to cancel the solicitation. Program Resources, Inc., B-215201, Sept. 25, 1984, 84-2 CPD ¶ 356. In making this determination, the contracting officer need only establish a reasonable basis for the

cancellation. Mercury Consolidated Inc., B-218182, June 17, 1985, 85-1 CPD ¶ 687. Moreover, we have recognized that the agency's decision to cancel is closely linked to its discretionary authority to determine its minimum needs and the best method of accommodating those needs. Baucom Janitorial Service, Inc., B-210216, May 31, 1983, 83-1 CPD ¶ 584.

The policy directive was clearly applicable to this negotiated solicitation as it was to apply to all solicitations that had not had bid opening or announcement of results. Here, at the time the directive was issued the government's in-house estimate had not been opened and results of the cost comparison had not been announced. The bid opening condition, of course, would not apply to this negotiated solicitation.

The agency reports that pursuant to the directive it plans to provide under the reissued solicitation GFE which includes a tractor, seven forklifts, various items of woodworking equipment such as two 6,000 pound scales and three power saws and over \$18,000 worth of minor woodworking equipment such as a drill press, hammers and stripping reels. We think that the availability of this equipment significantly alters the resources which can be used by commercial offerors in performing the services and changes the basis upon which offerors compute their prices. We have recognized that cancellation is appropriate in such circumstances. D-K Associates, Inc., B-206196, Jan. 18, 1983, 83-1 CPD ¶ 55.

Although Dixie argues to the contrary, given the capital outlay required to purchase or lease the necessary equipment under the original solicitation, we cannot disagree with the Navy's assertion that the additional GFE may well increase competition. The possibility of additional small business competition under the new solicitation also provides a reasonable basis for the cancellation. Cadre Technical, Inc., et al., B-221430, et al., Mar. 14, 1986, 86-1 CPD ¶ 256.

While it is unfortunate, as the protester points out, that the procurement was delayed, we think the cancellation was proper.

The protest is denied.

for Seymour Egan
Harry R. Van Cleve
General Counsel