



Comptroller General
of the United States

121283

Washington, D.C. 20548

Decision

Matter of: Michelle F. Evans

File: B-259165

Date: March 6, 1995

Michelle F. Evans for the protester.
Riggs L. Wilks, Jr., Esq., and Elizabeth D. Berrigan, Esq.,
Department of the Army, for the agency.
Paul E. Jordan, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency properly canceled solicitation after bid opening where it determined that sufficient funds were no longer available to make an award.

DECISION

Michelle F. Evans protests the cancellation, after bid opening, of invitation for bids (IFB) No. DABT31-94-B-0031, issued by the Department of the Army, for instructional/educational services at Fort Leonard Wood, Missouri. Ms. Evans contends that the cancellation was improperly effected in order to avoid awarding a contract to her as the low bidder.

We deny the protest.

The instructional/educational services sought under the canceled solicitation stem from the Army Community Services's (ACS) Consumer Affairs and Financial Assistance Program (CAFAP). See Army Regulation (AR) 608-1, ch. 9. This regulation calls for ACS to provide assistance to military families concerning various aspects of personal consumer affairs and finances. The program components include a basic prevention education program, financial assistance services, public information, debt liquidation assistance, consumer advocacy program, and consumer complaint resolution assistance. Until 1993, these services were provided by ACS employees. Due to a reduction in the number of authorized employees at the ACS office in 1993, only one ACS employee, a financial planner, had responsibility for these services. Early in 1993, the

Consumer Credit Counseling Service (CCCS) of Columbia, Missouri (a nonprofit organization) began providing debt counseling services at the ACS office at no charge to the service member or the government.¹ The once per week services gradually expanded to four times per week. These services are performed in accordance with a memorandum of understanding between the CCCS and the Fort Leonard Wood Director of Community and Family Activities.

The services performed by the CCCS cover the debt liquidation assistance provisions of the CAFAP. All other CAFAP work was performed by ACS employees in fiscal year 1993. Late in fiscal year 1993, ACS obtained special funding to supplement the services performed by its single financial planner. It issued a solicitation similar to that at issue here, which primarily matched the responsibilities of the ACS financial planner. Under that solicitation, the contractor could also be required to perform the services performed by CCCS on an as needed basis. That IFB resulted in a purchase order, issued to Ms. Diane Hansen, for 1,532 hours of service between October 1, 1993, and June 30, 1994. A similar solicitation for a follow-on period resulted in a purchase order being issued to Ms. Evans for 532 hours of service between July 1 and September 30, 1994.

The IFB at issue contemplated the award of a firm, fixed-price contract to perform the same services (2,048 hours) for fiscal year 1995. At the time the IFB was issued, the Army anticipated that it would receive special funding to pay for the services. However, the IFB included the availability of funds clause (Federal Acquisition Regulation (FAR) § 52.232-18) which advised bidders that "funds are not presently available for this contract," and that the government's obligation was contingent upon the availability of appropriated funds.

Five bids, including Ms. Evans's apparently low bid were submitted by the September 1 bid opening date. Subsequent to the receipt of bids, the Army determined to cancel the solicitation. The decision was based upon an unanticipated change in the ACS mission from a center-based program to an outreach program. Core funding was unavailable to execute this changed mission. An additional funding request was rejected by a higher command, potentially necessitating reorganization and job rewriting. The Army also expected significant cuts in fiscal year 1996 funding. Accordingly, funding for the services encompassed by the IFB had to be redirected for fiscal year 1995.

¹The government provides office space, utilities, furniture, and limited copier support for these services.

Upon learning that the IFB had been canceled, Ms. Evans filed an agency-level protest. When it was denied on October 26, Ms. Evans filed this protest with our Office, challenging the cancellation on various grounds.

Cancellation of a solicitation after bids have been opened and prices have been exposed is only permitted where a compelling reason exists to cancel. P&C Constr., B-251793, Apr. 30, 1993, 93-1 CPD ¶ 361; FAR § 14.404-1(a)(1). An agency's determination that funds are not available for contract obligation is a sufficient reason to cancel a solicitation, and it is not our role to question the unavailability of funds. NDT-1, Inc.--Recon., B-220570.2, Apr. 15, 1986, 86-1 CPD ¶ 364. The management of an agency's funds generally depends on the agency's judgment concerning which projects and activities shall receive increased or reduced funding and a contracting agency has the concomitant right to cancel a solicitation when, as a result of its allocation determinations, sufficient funds are not available. Kato/Intermountain Elec., A Joint Venture, B-245807; B-245925, Jan. 30, 1992, 92-1 CPD ¶ 129.

Here, the agency explains that due to mission changes and funding cuts for the ACS office, the funds it would have used to pay for this contract must be applied to other requirements. While Ms. Evans argues that the cancellation is a subterfuge to avoid awarding her a contract, she has produced no evidence which supports her allegations. Procurement authorities are presumed to act in good faith and, in order for our Office to conclude otherwise, the record must show that procuring officials intended to injure the protester. Cycad Corp., B-255870, Apr. 12, 1994, 94-1 CPD ¶ 253. As there is no evidence of such an intent here, Ms. Evans's mere inference of bad faith is insufficient to prove her case. Id.

Our conclusion is not affected by the fact that the CCCS performs some CAFAP tasks. The CCCS services are generally separate from those contained in the IFB, are provided at no cost to the government, and in any event, predate any contractual arrangement for the solicited services. Thus, the CCCS' continued performance of debt liquidation services is irrelevant to the agency's determination to cancel the solicitation.² Our conclusion also is not changed by the various additional allegations made by Ms. Evans concerning

²Ms. Evans also contends that Ms. Hansen was hired by ACS to perform the services covered by the canceled IFB. The agency advises that, in fact, Ms. Hansen works for CCCS. Thus, her employment has no relevance to this protest.

the Army's relationship with CCCS, her prior performance of services, and the Army's treatment of the Association of the United States Army. We have considered them all and find them without merit.

The protest is denied.

For 
Robert P. Murphy
General Counsel