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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Firetech Automatic Sprinkler

File: B-295882

Date: May 4, 2005

A. W. Pharris for the protester.

Mary E. Carney, Esq., and Spencer C. Bassett, Esq., Department of Justice, Federal Prison Industries, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's cancellation of solicitation after receipt of quotations is denied where record supports reasonableness of cancellation due to lack of available funding.

DECISION

Firetech Automatic Sprinkler protests the cancellation of request for quotations (RFQ) No. VC0088-05, issued by the Department of Justice, Federal Prison Industries (FPI), for the installation of a sprinkler system. Firetech contends that the agency lacked a reasonable basis for the cancellation. Firetech further challenges the agency's stated intention to perform the work in-house.

We deny the protest.

Three quotations were received by the RFQ's January 7, 2005 closing time. Firetech's quotation, among other things, omitted the firm's name and experience information; the firm was given an opportunity to submit the missing quotation information. The agency's subsequent review of the quotations, however, revealed that they all exceeded the government's estimate for the work. The contracting officer, who confirmed the agency's cost estimate, recognized that the estimate served as the basis for the limited funding committed for the project. After confirming that no additional funds were available to support a selection from the quotations received under the RFQ, the contracting officer canceled the solicitation. This protest followed.

Firetech protests the cancellation of the RFQ. The firm contends that the agency's cost estimate for the work must have been flawed, resulting in insufficient funding being committed for the work.¹

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ; in this regard, so long as there is a reasonable basis for doing so, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until quotations have been submitted and evaluated. Quality Tech., Inc., B-292883.2, Jan. 21, 2004, 2004 CPD ¶ 29 at 2-3; DataTrak Consulting, Inc., B-292502 et al., Sept. 26, 2003, 2003 CPD ¶ 169 at 5. It is well-established that lack of funding for a procurement provides a reasonable basis for cancellation, as agencies cannot award contracts which exceed available funds. First Enter., B-292967, Jan. 7, 2004, 2004 CPD ¶ 11 at 3-4; James M. Carroll-Recon., B-221502.3, Mar. 24, 1986, 86-1 CPD ¶ 290 at 3. Further, an agency may properly cancel a solicitation due to funding limitations regardless of any challenge to the validity of the agency's underlying cost estimate which, as in this case, served as the basis for the funding amount; as stated above, agencies simply cannot create obligations that exceed available funds. See National Projects, Inc., B-283887, Jan. 19, 2000, 2000 CPD ¶ 16 at 4. Accordingly, given that all the quotations received here exceeded available funding for the work, we see no basis to question the propriety of the agency's decision to cancel the RFQ.

To the extent Firetech challenges the agency's stated intention to perform the sprinkler installation work in-house, the matter is not appropriate for our review. Our Office does not generally review agency decisions to perform in-house work related to cancelled procurements, since such decisions are matters of executive branch policy, which are not within our bid protest function. See, e.g., RAI, Inc., B-231889, July 13, 1988, 88-2 CPD ¶ 48 at 1-2. Further, the limited exception to this rule, involving cases where an agency utilizes the procurement system to aid in its determination, by issuing a competitive solicitation for the purpose of comparing the costs of in-house performance with the costs of contracting, is not at issue here. Id.

The protest is denied.

Anthony H. Gamboa
General Counsel

¹ The agency contends that our Office lacks jurisdiction to review protests of FPI procurements, arguing that FPI is a nonappropriated fund activity. Our Office has recently held that, since FPI is defined by statute as a federal agency, the agency is subject to our jurisdiction under the Competition in Contracting Act, 31 U.S.C. §§ 3551-3556 (2000), amended by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, § 326, 118 Stat. 1811 (2004). USA Fabrics, Inc., B-295737, B-295737.2, Apr. 20, 2005, 2005 CPD ¶ ____ at 2-3.