



Decision

Matter of: Tien Walker

File: B-414623.2; B-414623.3

Date: July 10, 2017

Tien Walker for the protester.

Tudo N. Pham, Esq., Department of State, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency reasonably canceled its solicitation where the agency's requirements were time-dependent, and adversely impacted by the statutory requirement to stay contract award in response to an earlier protest.

DECISION

Tien Walker, a small business of Reno, Nevada, protests the cancellation of request for quotations (RFQ) No. SAQMMA17Q0149, issued by the Department of State (DoS) for public opinion polling surveys to be conducted in South Asia. Tien Walker argues that DoS improperly canceled the solicitation as a pretext to avoid GAO's review of an earlier protest.

We deny the protest.

BACKGROUND

The RFQ was issued on April 20, 2017, as a combined Synopsis/Notice of Intent to Sole Source, for two nationwide surveys in South Asia. RFQ at 1-2; Contracting Officer's Statement (COS) at 1-2. Specifically, the contractor was to conduct two, nationally-representative public opinion surveys in Afghanistan, to be conducted sequentially (also referred to as "waves"), with the first survey to be completed before the start of the Muslim observance of Ramadan (May 26). COS at 1-2. The purpose of the surveys was to provide US policy-makers with two separate readings of Afghan public opinion this year (2017). *Id.* at 1. Additionally, for security reasons, the RFQ listed only the general, geographic region in which the surveys were to be conducted and required

prospective vendors to respond to two “vetting” questions before being given access to the solicitation itself. Id. The closing date for receipt of quotations was April 25.

On April 25 (before the RFQ’s closing time), Tien Walker filed a protest with our Office challenging the terms of the RFQ. The protester alleged, among other things, that the agency’s notice of intent to conduct a sole-source procurement was unduly restrictive of competition, done without adequate market research, and not properly set aside for small businesses. Protest, Apr. 24, 2017, at 1-8. In response, the agency notified our Office that it had cancelled the RFQ and would not resolicit this specific requirement.¹ DoS Email to GAO, May 3, 2017. We then dismissed Tien Walker’s earlier protest as academic. Tien Walker, B-414623, May 8, 2017 (unpublished decision). This protest followed.

DISCUSSION

Tien Walker alleges that the agency’s cancellation of the solicitation was improper. Specifically, the protester alleges that because DoS did not present enough information regarding its reason for canceling the solicitation, the rationale for doing so must be a pretext to avoid resolution of the earlier protest. Protest, May 3, 2017, at 2. We have considered all of the protester’s arguments in support of its position, and find that none provide a basis on which to sustain the protest.²

In a negotiated procurement, such as this one, a contracting agency has broad discretion in deciding whether to cancel a solicitation. SupplyCore Inc., B-411015.8, May 27, 2016, 2016 CPD ¶ 153 at 3. Thus, we have consistently explained that an agency need only establish a reasonable basis to support a decision to cancel a solicitation. See e.g., AeroSage LLC, B-410648.2, B-410648.3, Mar. 20, 2015, 2015 CPD ¶ 111 at 3; SMF Sys. Tech. Corp., B-292419.3, Nov. 26, 2003, 2003 CPD ¶ 203 at 3; Miller, Davis, Marter & Opper, P.C., B-242933.2, Aug. 8, 1991, 91-2 CPD ¶ 176 at 3. A reasonable basis to cancel exists when, for example, an agency concludes that a solicitation does not accurately reflect its needs. WKF Friedman Enters., B-409892.2, Sept. 25, 2014, 2014 CPD ¶ 282 at 2. Moreover, an agency may cancel a solicitation regardless of when the information precipitating the cancellation

¹ The agency also issued a “sources sought” notice seeking capability statements so as to determine whether to set aside, for small businesses, its future Afghan public opinion survey requirements. Agency Report (AR), Tab 5, DoS Sources Sought Notice, May 3, 2017, at 1-3; COS at 3. Specifically, the notice informed potential offerors that “[t]he results of this market research will contribute to determining the method of procurement and assist DOS in developing and further defining procurement, acquisition, and development strategies.” AR, Tab 5, DoS Sources Sought Notice, May 3, 2017, at 1.

² As a preliminary matter, we note that while Tien Walker now challenges the agency’s cancellation decision, cancellation of the solicitation was exactly what the protester requested as relief originally. See Protest, Apr. 24, 2017, at 8.

first arises. SMF Sys. Tech. Corp., *supra*. This is so, even when the cancellation occurs during the pendency of a protest. See e.g., AeroSage LLC, *supra*; Lasmer Indus., Inc., B-400866.2 *et al.*, Mar. 30, 2009, 2009 CPD ¶ 77 at 3.

Where, as here, a protester argues that the agency's rationale for cancellation is but a pretext--that is, that the agency's actual motivation is to avoid awarding a contract on a competitive basis or to avoid resolving a protest--we will examine the reasonableness of the agency's actions in canceling the procurement. Miller, Davis, Marter & Opper, P.C., *supra*, at 4. Nevertheless, the reasonableness standard applicable to cancellation of a solicitation remains unchanged. Bluehorse, B-412494, B-412494.2, Feb. 26, 2016, 2016 CPD ¶ 64 at 4-5; Lasmer Indus., Inc., *supra*.

The DoS explains that, as a result of Tien Walker's earlier protest to our Office, the agency was required to stay contract award and performance, in accordance with applicable procurement regulations. Memorandum of Law (MOL) at 3, *citing* Federal Acquisition Regulation (FAR) § 33.104(b); COS at 3. Consequently, even if Tien Walker's earlier protest had been denied, the contractor would not be able to complete the first survey wave prior to Ramadan.³ COS at 3. As the contracting officer further explains,

[t]he government now has to re-examine its needs, since there is no value in conducting two waves of surveys between Ramadan and the beginning of the winter season. Winter weather conditions make face-to-face fieldwork more challenging from late October and onward. The Government typically conducts each [survey] wave six months [sic] apart. If we were to conduct the waves to [sic] close together, it is unlikely that the publics' [sic] attitudes have changed dramatically in such a short span with the exception of any major events.

Id. at 4.

We find that DOS's rationale for cancelling the solicitation was not a pretext to avoid awarding a contract on a competitive basis or to avoid resolving a protest, as Tien Walker surmises. Rather, the record reflects that Tien Walker's earlier protest--and the attendant stay of contract award and performance--caused the agency's requirements to change. Specifically, due to the challenge to the solicitation, the agency was unable to make a contract award in accordance with FAR § 33.104(b). Consequently, the contractor would not be able to complete the first wave of fieldwork prior to Ramadan, and two waves of fieldwork, properly spaced apart, prior to the Afghan winter season. In sum, as the agency's public opinion survey requirements could not be achieved in the

³ We note for the record that the Competition in Contracting Act of 1984 also contemplates that an agency might elect to override any applicable stay and move forward with contract award or performance, under certain circumstances, which may have been applicable here. See 31 U.S.C. §3553(c)-(d).

necessary timeframe, and had therefore changed, the agency had a reasonable basis to cancel its solicitation.⁴

Tien Walker contends that the agency cannot argue that the time has passed to satisfy the requirement (thereby justifying cancellation), but simultaneously also claim a need to resolicit for the same requirement.⁵ The protester alleges that such rationales are inconsistent and conflicting ones, and cites to our decision in Walker Development & Trading Group, Inc., B-413924, Jan. 12, 2017, 2017 CPD ¶ 21, in support thereof.

In Walker Development, we found the agency failed to produce a report that coherently addressed the agency's rationale for the cancellation of the solicitation, and therefore concluded that the record did not establish that the agency had a reasonable basis for its solicitation cancellation. We find Tien Walker's reliance on our Walker Development decision to be misplaced, as the facts in the current protest are inapposite to those in the cited decision. Here, there is nothing inconsistent or conflicting about the agency's rationale for the cancellation of the solicitation. As detailed above, DoS reasonably determined that its needs for a current Afghan public opinion survey could not be achieved in the necessary timeframe and had therefore changed. The agency also simultaneously decided to conduct market research to guide its future procurements for such services.⁶ The "sources sought" notice is not itself a solicitation. See AR, Tab 5, DoS Source Sought Notice, May 3, 2017, at 2 ("This is not a solicitation announcement. No contract will be awarded from this announcement. This request for capability information does not constitute a request for proposals"). Likewise, the agency's decision to plan for possible future Afghan public opinion survey requirements does not alter the fact that the present Afghan public opinion survey requirement had changed. There is simply no requirement, as the protester suggests, that the agency amend a solicitation that no longer reflects its requirements, only so as to leave it open indefinitely for possible future needs.

The protest is denied.

Susan A. Poling
General Counsel

⁴ Further, the agency's decision to conduct further market research, and determine whether future Afghan public opinion surveys should be set aside for small businesses, reflects another change in requirements from the originally-intended sole-source solicitation.

⁵ The protester also points to another DoS solicitation, No. SAQMMA17Q0172, as evidencing the same Afghan public opinion survey requirements. The agency explains, however, that solicitation No. SAQMMA17Q0172 is for a different requirement--focus group studies to be conducted in the Philippines. COS at 4; MOL at 5.

⁶ Ironically, one of the Tien Walker's initial protest grounds was that the agency had failed to conduct adequate market research. Protest, Apr. 24, 2017, at 6-7.