



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Safety Storage, Inc.

File: B-280851.2

Date: May 13, 1999

Sam Gdanski, Esq., Jeffrey I. Gdanski, Esq., and Scott Howard Gdanski, Esq., for the protester.

Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.

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DIGEST

Agency has a reasonable basis for canceling solicitation where it no longer has a need for the requirement.

DECISION

Safety Storage, Inc. (SSI) protests the decision of the Defense Industrial Supply Center (DISC) to cancel request for proposals (RFP) No. SPO-500-98-R-0999 for mobile reuse centers (MRC) for ship and land-based operations for the control and storage of hazardous materials.

We deny the protest.

The Defense Supply Center, Columbus, Ohio (DSC-OH), initially synopsisized the solicitation in the Commerce Business Daily (CBD) on September 3, 1997, as an unrestricted procurement. Subsequently, in a November 5 CBD notice, the agency announced that the solicitation was canceled and that a new solicitation would be issued by DISC, Philadelphia, Pennsylvania (DISC-PA). DISC-PA synopsisized the procurement in the CBD on January 23, 1998, and issued the RFP on April 17, on an unrestricted basis. The RFP contemplated the award of an indefinite-quantity, indefinite-delivery requirements contract for a 1-year base period with up to four 1-year option periods. RFP at 105.

On August 21, SSI filed a protest with our Office challenging the agency's decision not to set aside the procurement for small businesses. We sustained SSI's protest based on our conclusion that the contracting officer's (CO) determination not to set aside the procurement was based on incomplete information, unsupported assertions

regarding the complexity of the required MRCs, and insufficient efforts to ascertain small business capability to perform the contract. Safety Storage, Inc., B-280851, Oct. 29, 1998, 98-2 CPD ¶ 102. We recommended that the CO conduct a proper market survey to adequately investigate the potential small business capability and interest in the procurement and determine whether there was a reasonable expectation that offers would be obtained from two responsible small business concerns and that award could be made at a fair market price. Id. at 5.

In response to our decision, the agency informed our Office that the CO was conducting a market survey and coordinating his efforts with both DISC-PA's small business office, and the Small Business Administration (SBA). Agency Report, Tab 6, Letter from DISC-PA to GAO 1 (Nov. 20, 1998). The agency subsequently advised our Office that its customer no longer required the MRCs. Agency Report Tab 10, Letter from DISC-PA to GAO 1 (Feb. 19, 1999). Accordingly, DISC-PA canceled the solicitation. Agency Report Tab 9, RFP No. SPO-500-98-R-0999, amend. No. P00006, Feb. 18, 1999. This protest followed.

SSI argues that the agency's decision to cancel the RFP lacks a reasonable basis and demonstrates bad faith. Specifically, SSI maintains that the agency needs the MRCs since, prior to the cancellation, the agency devoted considerable time and effort to revising the RFP's specifications to meet its requirement. SSI further alleges that the delay of more than 3 months before the agency decided to cancel the RFP following our decision sustaining its protest demonstrates bad faith on the part of DISC-PA. In this regard, SSI argues that the delay in canceling the RFP shows that the agency was motivated by its desire to not issue the RFP as a small business set-aside and to not award a contract to SSI.

In a negotiated procurement such as this one, the contracting activity has broad authority to decide whether to cancel a solicitation and need only establish a reasonable basis for the cancellation. Brackett Aircraft Radio Co., B-246282, Jan. 8, 1992, 92-1 CPD ¶ 43 at 2. Cancellation is appropriate when an agency determines that it no longer has a requirement for the items solicited. The Potomack Partnership, B-252860, Aug. 3, 1993, 93-2 CPD ¶ 75 at 3. It is the responsibility of the contracting activity to determine its requirements, and our Office will defer to the activity's judgment in that regard. Research Analysis and Maintenance, Inc., B-236575, Dec. 12, 1989, 89-2 CPD ¶ 543. In addition, although we will consider a protester's contention that an agency's actual motivation in canceling a solicitation is to avoid awarding a contract or is in response to the filing of a protest, see Griffin Servs. Inc., B-237268.2 et al., June 14, 1990, 90-1 CPD ¶ 558 at 3, recon. denied, B-237268.3 et al., Nov. 7, 1990, 90-2 CPD ¶ 369, if there is a reasonable basis for the cancellation, notwithstanding some element of personal animus, we will not object to the cancellation. Dr. Robert J. Telepak, B-247681, June 29, 1992, 92-2 CPD ¶ 4 at 4.

Here, there is no basis to conclude that the agency unduly delayed implementing our recommendation. The record shows that in accordance with the recommendation in

our prior decision sustaining SSI's protest, the CO conducted a market survey to determine whether the procurement should be set aside for small businesses. Agency Report, Contracting Officer's Statement, April 1, 1999, ¶ III.3. The survey consisted of mailing certified letters to firms that had not submitted offers in response to the RFP. Those letters were mailed on November 20, 1998--within 4 weeks of our decision sustaining SSI's protest--to all firms on the agency's mailing list which had responded to any of the CBD announcements publicizing the requirement for the MRCs. Id. The record further shows that after issuance of our decision, the CO coordinated his efforts with the DISC Small Business Office, the SBA procurement center representative, and the agency's Office of Counsel. Id. The CO further states that from December 1998 until February 1999, he met with various entities to discuss possible sources of supply and methods of implementing our recommendation. Agency Report, Tab 5, Affidavit of Contract Specialist at 1. Contrary to SSI's suggestions, therefore, the record shows that within a reasonable amount of time following the issuance of our decision sustaining SSI's protest, the agency initiated the necessary steps to implement our recommendation. Based on this record, there is no basis to conclude that the agency tried to avoid setting aside the solicitation or otherwise unduly delayed implementing our recommendation.

Before the CO could determine whether the RFP should be set aside for small businesses, however, on February 17, 1999, the Naval Supply Systems Command (DISC's customer for the MRCs) informed DISC that it no longer had a need for the MRCs. Accordingly, the agency canceled the RFP on February 18. The fact that the cancellation occurred after our Office sustained SSI's initial protest and after the agency spent time revising the specifications, does not show that the cancellation was improper; an agency may properly cancel a solicitation no matter when the information precipitating the cancellation arises. See Admiral Towing and Barge Co., B-245600; B-245602, Jan. 16, 1992, 92-1 CPD ¶ 83 at 6. Since there is no dispute that the MRCs are in fact not needed,¹ that alone provides a proper basis for cancellation. Pneumatrek, Inc., B-225136, Feb. 24, 1987, 87-1 CPD ¶ 202.

While SSI surmises that the timing of the cancellation, coming after what SSI perceives as a delay following the issuance of our decision sustaining its protest, suggests bad faith on the part of contracting officials, there is no evidence to support this claim. To show bad faith, a protester must show that the contracting agency directed its actions with the specific and malicious intent to injure the protester. Robertson Leasing Corp., B-275152, Jan. 27, 1997, 97-1 CPD ¶ 49 at 4. We will not attribute unfair or prejudicial motives to contracting officials on the basis of inference

¹ To the extent that SSI alleges that the agency has a continuing need for the MRCs and suspects that the agency is obtaining the MRCs on a sole-source basis, SSI has provided no evidence in support of its allegation.

or supposition. See GTE Gov't Svs. Corp., B-222587, Sept. 9, 1986, 86-2 CPD ¶ 276 at 10. There is nothing in the record which even suggests that the cancellation was intended to prevent SSI from receiving the award because of its prior protest, or that the cancellation was intended to avoid issuing the solicitation as a set-aside for small businesses.

The protest is denied.

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