



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Billings American Indian Council
File: B-228989, B-228989.2
Date: December 29, 1987

DIGEST

1. Protest against agency's cancellation of solicitation is untimely where it was not filed within 10 days of the time protester learned of cancellation.
2. Agency may properly cancel solicitation where services are no longer required.
3. Protest that unqualified offeror was selected for award under solicitation is rendered academic by agency's proper cancellation of solicitation.

DECISION

Billings American Indian Council (BAIC) protests the actions taken by the Indian Health Service, Department of Health and Human Services (HHS) pursuant to request for proposals (RFP) Nos. 244-87-0001 and 244-87-0001A (hereinafter referred to as -0001 and -0001A). BAIC has filed two protests in this matter. The first protest is dismissed and the second protest is denied.

The HHS issued RFP No. -0001 on January 30, 1987, seeking proposals to provide health care and related services to eligible American Indians in and around the city of Billings, Montana. BAIC submitted a proposal responding to this solicitation.

BAIC maintains that it was verbally awarded the contract under this RFP on April 1, 1987. It acknowledges that no

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contract document was executed. The HHS denies that any contract was entered into. 1/

By letter dated April 24, 1987, HHS notified BAIC that it was canceling RFP No. -0001 due to allegations that procedural improprieties had occurred. On May 8, HHS resolicited the same health care requirements under RFP No. -0001A. BAIC again submitted a proposal.

On July 24, HHS advised BAIC that another offeror had been selected for award. By letter dated July 24, BAIC filed a protest with HHS challenging the April 24 cancellation of RFP No. -0001, and also challenging the qualifications of the offeror selected for award under RFP No. -0001A. HHS denied BAIC's protest on August 21. On September 1, BAIC filed its first protest with our Office, reiterating its arguments that HHS' cancellation of RFP No. -0001 on April 24 was improper, and that the proposed awardee under RFP No. -0001A was not qualified. HHS withheld award of a contract pending resolution of BAIC's protest.

On September 16, 1987, HHS published final regulations effectively eliminating the need for additional health care services to be provided by contractors in areas designated "Health Service Delivery Areas." 52 Fed. Reg. 35,048 (1987) (to be codified at 42 C.F.R. part 36). These regulations provide that additional contract services in "Health Service Delivery Areas" are no longer necessary since such services in those designated areas are provided directly by HHS. HHS notes that the new regulations are not local in scope, that is, they apply to all Indian reservations nationwide. HHS states that the geographical area which would have been serviced under RFP No. -0001A falls entirely within a designated "Health Service Delivery Area."

On September 30, HHS canceled RFP No. -0001A, stating that the services contemplated by that solicitation were no longer required under the new regulations. Upon receiving notification of the cancellation, BAIC filed a second

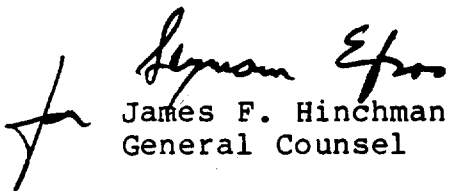
1/ BAIC's argument that it was verbally awarded a contract on April 1 is not for consideration under our Bid Protest Regulations. In passing, we note that, in negotiated procurements, execution of a written document normally precedes creation of a contract. See 48 C.F.R. §§ 14.407-1, 15.414 (1986). However, if a contract was, in fact, created as a result of the April 1 conversation, HHS' subsequent refusal to proceed under that contract constitutes a contract dispute which we will not consider. See 4 C.F.R. § 21.3(f)(1) (1987).

protest with our Office challenging the cancellation as improper.

To the extent BAIC's first protest to our Office challenges the April 24 cancellation of RFP No. -0001, we dismiss it as untimely since BAIC did not protest the action within 10 days after it became aware of the cancellation. 4 C.F.R. § 21.2(a) (1987). To the extent that protest challenges the qualifications of the offeror selected for award under RFP No. -0001A, we dismiss it as academic based on our decision, discussed below, that cancellation of that RFP was proper.

Concerning BAIC's second protest, alleging that HHS improperly canceled RFP No. -0001A, our Office has often held that an agency may cancel a solicitation where the goods or services solicited are no longer required. The Departments of the Army and the Air Force, National Guard Bureau--Reconsideration, B-224838.2, June 1, 1987, 87-1 C.P.D. ¶ 547; Creative Resources, Inc., B-225950, Feb. 11, 1987, 87-1 C.P.D. ¶ 153. Since HHS has concluded that it no longer requires the services sought under RFP -0001A, we find no basis for objecting to cancellation of that solicitation. BAIC's second protest is denied. Our conclusion that HHS properly canceled RFP No. 0001A renders academic the issue of whether the intended awardee under that solicitation would have been qualified to perform the contract. Global Fuels Limited, Corporation, B-225665.2, Mar. 27, 1987, 87-1 C.P.D. ¶ 355.

BAIC's first protest is dismissed and its second protest is denied.


James F. Hinchman
General Counsel