



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: William Michael Cunningham

File: B-249206

Date: October 22, 1992

William Michael Cunningham for the protester.
Ronald E. Cone, Department of Energy, for the agency.
Paula A. Williams, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency has a reasonable basis to cancel solicitation issued under small purchase procedures where it reasonably determined that changed circumstances necessitated the performance of the services in-house and therefore contract performance of the services was no longer required.

DECISION

William Michael Cunningham protests the cancellation of request for quotations (RFQ) No. DE-RQ01-92MI10210, issued by the Department of Energy (DOE) for research and administrative support services for DOE's Bank Deposit Financial Assistance Program. The protester contends that DOE has not provided a compelling reason for cancellation of the RFQ.

We deny the protest.

The RFQ was issued on April 29, 1992, under the small purchase procedures as set forth in Part 13 of the Federal Acquisition Regulation. Quotations were received from two vendors by the May 20 extended closing date and Cunningham submitted the apparent low quotation. On June 9, the contracting officer received a memorandum from the requiring activity requesting cancellation of the solicitation because it had become essential that DOE develop in-house capabilities to perform the required services. The solicitation was canceled on June 16.

Cunningham argues that DOE improperly canceled the solicitation on the pretext that the agency intended to perform the services in-house. The protester alleges that the agency may have been motivated by a desire to avoid awarding it a contract.

Cancellation of an RFQ is proper where the procuring agency no longer needs the supplies or services. Discount Machinery and Equip., Inc., B-231067.2, July 18, 1988, 88-2 CPD ¶ 63. As a general rule, we do not review agency decisions to cancel procurements and to perform work in-house, since these decisions are matters of executive branch policy. See Judith White, B-233853.2, June 9, 1989, 89-1 CPD ¶ 544. Where, however, the protester argues that the agency's rationale is but a pretext--that the agency's actual motivation is to avoid awarding it a contract or is in response to the filing of a protest--we will examine the reasonableness of the agency's actions in canceling the requirement. Griffin Servs. Inc., B-237268.2 et al., June 14, 1990, 90-1 CPD ¶ 558, aff'd, General Servs. Admin.--Recon., B-237268.3 et al., Nov. 7, 1990, 90-2 CPD ¶ 369.

We find that the cancellation here was reasonable. The record supports the agency's explanation that it was necessary for the requiring activity to use in-house personnel to perform the research and analysis requirement originally requested. In a July 29 memorandum, the Assistant Director for Business and Community Development explained that:

" . . . during the Procurement Competitive process, civil unrest occurred in Los Angeles, California, which affected the start dates of the Bank Deposit Program's expansion activities. At the Secretary of the Department of Energy's request [the Office of Minority Economic Impact] instituted an accelerated schedule to expedite bank deposits to minority financial institutions, specifically in California. This effort was necessary in order to assist with re-development recovery efforts for businesses damaged/lost during the civil unrest. . . . [The Office of Minority Economic Impact] responded by shifting from existing program functions to conducting research and data information gathering concerning minority financial institutions"

The agency determined that the changed circumstances made it necessary to utilize a government employee to perform the services which had been solicited under the RFQ. Although the protester speculates that the work is not being performed in-house, and theorizes that the agency may be

using "other noncompetitive means to acquire the needed services," the record contradicts these allegations. DOE has provided the name of the employee who is performing the program work which includes the services covered by the RFQ, and as a result of which the agency no longer requires these services. The record substantiates the agency's position that it will be able to meet its needs by using its in-house staff, and provides a basis to conclude that the decision to cancel the solicitation was not a pretext to avoid awarding a contract to Cunningham.

The protest is denied.


for James F. Hinchman
General Counsel