



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Total Design Services

File: B-257128.2

Date: October 17, 1994

Vinay Arora for the protester.
Alden F. Abbott, Esq., Department of Commerce, for the agency.
Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of request for proposals after submission and evaluation of offers is proper where the agency no longer requires the solicited services.

DECISION

Total Design Services (TDS) protests the cancellation of request for proposals (RFP) No. 52-DGNC-3-00075 issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), for photoplotting services.

We deny the protest.

The RFP, issued May 14, 1993, as a small business set-aside, contemplated the award of a requirements contract for photoplotting services--including photoplot negatives, positives, and paper copies--for the production of radar video maps. Three proposals were received by the June 21 closing date and two proposals, one submitted by Advance Reproduction Corporation and the other submitted by TDS, were included in the competitive range.

After discussions, best and final offers (BAFO) were received on December 10. Over the next several months and while the agency continued to evaluate BAFOs, the Aeronautical Charting Branch--the requiring activity--unexpectedly acquired two photoplotter machines as surplus equipment. The photoplotters provided the agency with in-house photoplotting capabilities that it did not expect to have when the RFP was issued. Additionally, new, efficient, and cost-effective automated techniques developed by agency staff allowed in-house production of photoplot positives and

paper copies. Because of these changes, NOAA issued amendment 0004 on January 10, 1994, which significantly reduced the RFP's estimated quantities.¹ On January 26, NOAA requested second BAFOs reflecting these reduced quantities.

While the agency on April 19 approved award to Advance Reproduction Corporation, it also requested a final review of the requirement because agency contracting personnel were concerned that much of the work being solicited was now being done in-house and the agency would award a requirements contract that would require little or no work.

Meanwhile, upon learning of the intended award, TDS challenged the size status of the intended awardee. On May 16, the Small Business Administration determined that Advance Reproduction Corporation was not a small business; TDS was therefore in line for award under the RFP.

On June 3, NOAA canceled the RFP, stating that because it had received two photoplotters and because its staff had become proficient in the use of these machines, the agency was now able to support all of its photoplotting requirements in-house.

TDS protests that NOAA's rationale for canceling the RFP lacks substance and that the agency acted in bad faith since it never intended "to make an award under this solicitation or at least not make an award to TDS." The protester sees as evidence of bad faith the fact that the agency called for two rounds of BAFOs yet never awarded a contract and canceled the solicitation only after the intended awardee did not qualify as a small business and TDS was in line for award. In the protester's view, NOAA used TDS' proposal "for information and planning purposes for its own photoplotting projects" and caused TDS to expend resources needlessly.

All proposals received in response to a request for proposals may be rejected if the agency determines that cancellation is clearly in the government's interest. Federal Acquisition Regulation § 15.608(b)(4). The record confirms that the agency elected to perform its photoplotting in-house; except in circumstances not relevant here, we do not review an agency's decision to cancel a solicitation in order to perform services in-house, because

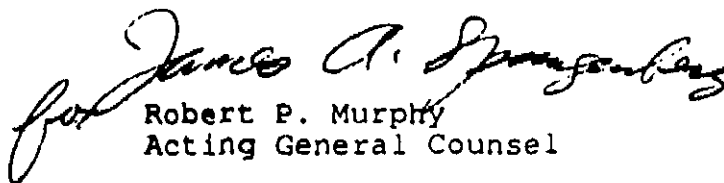
¹Amendment 0004 reduced the RFP's estimated quantities of photoplot negatives, positives, and paper copies from 1,500, 1,500 and 7,500, respectively to 1,000, 100 and 250.

such decisions are a matter of executive branch policy, which is not within our bid protest function. Nomura Enter. Inc., B-251889.2, May 6, 1993, 93-1 CPD ¶ 490. Thus, NOAA had a reasonable basis to cancel the RFP because there is no requirement that an agency award a contract for items or services which it no longer needs. See California Inflatables Co., Inc., B-241729, Feb. 6, 1991, 91-1 CPD ¶ 133. The fact that NOAA's determination came only after receipt of BAFOs to perform the services in-house does not preclude cancellation of the RFP since an agency properly may cancel a solicitation, regardless of when the information precipitating the cancellation arises. See System-Analytics Group, B-233051, Jan. 23, 1989, 89-1 CPD ¶ 57.

While TDS alleges that the cancellation was motivated by bad faith, it offers no evidence to support that allegation. Government officials are presumed to act in good faith and, therefore, for our Office to conclude that an agency acted in bad faith, the record must establish that contracting officials intended to injure the protester. Nomura Enter. Inc., supra. Based on our review of the record, there is nothing which suggests that such intent existed here.

In addition, there is no evidence that the agency used the TDS proposal for information and planning purposes. As the agency explains, it has always had an in-house photoplotting capability and needed no assistance from TDS for planning a photoplotting operation. The solicitation was issued because the agency's photoplotting capability was overworked--a situation which changed when the agency acquired the surplus photoplotters, and was then able to meet its photoplotting needs in-house.

Accordingly, the protest is denied.


 Robert P. Murphy
 Acting General Counsel