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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Walker Development & Trading Group, Inc.

File: B-413924

Date: January 12, 2017

Terrance Walker, Walker Development & Trading Group, Inc., for the protester.
Paul K. Petraborg, Esq., Department of Veterans Affairs, for the agency.
Katherine I. Riback, Esq., and Amy B. Pereira, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency's cancellation of a solicitation cannot be found reasonable where the agency failed to provide a coherent and consistent rationale for the cancellation.

DECISION

Walker Development & Trading Group, Inc., of Reno, Nevada, protests the cancellation of request for quotations (RFQ) No. VA262-16-Q-0766 by the Department of Veterans Affairs (VA) for laundry services, and the extension of the period of performance of an existing contract previously awarded to Railroad Cleaners of Pittsburg, California, for the same services.

We sustain the protest.

BACKGROUND

On July 7, 2016, the agency posted the RFQ on the Federal Business Opportunities (FedBizOpps) website for laundry services for the Los Angeles, Loma Linda and Long Beach VA hospitals. The RFQ anticipated the award of an indefinite-delivery/indefinite-quantity (IDIQ), fixed-priced contract for a base year and four 1-year options.¹ Quotations were to be evaluated considering price and technical

¹ This RFQ was issued pursuant to Federal Acquisition Regulation (FAR) Part 12 procedures for the acquisition of commercial items.

acceptability.² RFQ at 89. The solicitation stated that award would be made to the lowest-priced, technically acceptable offeror. Id.

After the closing date for receipt of quotations, the agency reopened the solicitation on September 1, amending the solicitation to increase the maximum award amount from \$2,500,000 to \$10,000,000. FedBizOpps Notice, Agency Supp. Filing (Nov. 11, 2016) at 118-119; Agency Supp. Filing (Dec. 7, 2016), Tab 4, Contract Specialist's Statement (undated). Revised quotations were due by September 13. Walker submitted a timely revised quotation. Id.

On October 3, the protester received a notice that the agency had cancelled the solicitation which stated as follows:

After careful consideration, we've decided to cancel our efforts to procure laundry services upon receiving legal guidance to do so. We plan to re-solicit our laundry project within the next few months. We will keep you informed with news on our next steps. Once a new solicitation is issued, you will be the first to know. Thank you for your patience and feel free to contact me with any questions.

Protest, Tab 3, Agency Cancellation Notice (Oct. 3, 2016). On September 30, the same contracting activity stated that it was exercising its rights under FAR clause 52.217-8, option to extend services, to extend its contract with Railroad Cleaners, for \$1.7 million, to continue procuring these services. RFQ at 41; Protest, Tab 2, Award Notice to Railroad Cleaners (Sept. 30, 2016).³ The protester received notice of the cancellation and the subsequent award to Railroad Cleaners. This protest followed on October 5.

² The technical factor consisted of the following subfactors: (1) offeror's facility demonstrates a "design for asepsis"; (2) offeror's quality assurance program demonstrates the ability to ensure the requirements of the performance work statement (PWS) are met; (3) offeror's quality assurance program addresses procedures to secure government property while under the contractor's jurisdiction; and (4) offeror's contingency plan illustrates that services can be continued in the event of certain circumstances. RFQ at 89. The RFQ stated that quotations must receive an acceptable rating on each subfactor in order to receive an overall rating of technically acceptable. Id.

³ We note that the record indicates that the award to Railroad Cleaners is being made under the same solicitation number (VA262-16-Q-0766) as the solicitation cancelled by the agency. The award notice also states that the reason for the modification of the solicitation is to "exercise an option." Protest, Tab 2, Award Notice to Railroad Cleaners (Sept. 30, 2016).

Walker argues that the agency lacked a reasonable basis to cancel the solicitation, that the agency's stated rationale for cancelling the solicitation is a pretext, and that the agency's actual motivation was to award a contract to Railroad Cleaners "who seem to win all of the awards for laundry out of the contracting office." Protest at 1. The protester also contends that the agency, in essence, has made a sole-source award to Railroad Cleaners that "foreclosed competition" for this work. Id. at 5.

On November 4, the due date of the agency report, the agency filed a document titled "Agency response and motion to dismiss" with three attachments. The attachments show that the agency made award to Railroad Cleaners on August 1, for emergency laundry services for the Los Angeles, Loma Linda and Long Beach VA hospitals for one month under solicitation No. VA262-16-Q-0766. Agency Motion to Dismiss, Tab 1, Agency Contract with Railroad Cleaners (Aug. 1, 2016). The agency extended this contract until September 2016 by amendment No. 1, and then by amendment No. 2, extended the contract until February 28, 2017. Agency Motion to Dismiss, Tab 2, Amend No. 1, Sept. 1, 2016; Amend No. 2, Sept. 30, 2016.

The agency argues in its brief legal memorandum that the alleged sole-source contract the protester contends was awarded to Railroad Cleaners, was, in fact, a continuation of an "existing contract [that] has been extended through February, 2017 in full compliance with [FAR clause] 52.217-8." Agency Motion to Dismiss (Nov. 4, 2016). The agency also argues that the protest therefore concerns a matter of contract administration within the discretion of the contracting agency and requests dismissal. Id.

Following receipt of this request for summary dismissal, our Office notified the agency on November 7 that the agency's response was "incomplete" as it did "not address the cancellation issue." Email from GAO to Agency and Protester (Nov. 7, 2016).

On November 8, our Office requested that the agency supplement its agency report by November 11. GAO Email to Agency and Protester (Nov. 8, 2016).⁴ In response, the agency submitted a 2-page narrative from the contract specialist that stated that if the contract had been awarded Walker would have received the award because Walker submitted the lowest-priced, technically acceptable quotation. The contract specialist stated that the agency did not make award because the solicitation identified a minimum contract amount of \$1,000,000 for the IDIQ

⁴ The protester was copied on each communication with the agency and responded to each agency submission.

contract to be awarded, and Walker's quotation was under that amount. Contracting Specialist Statement (Undated/Submitted Nov. 11, 2016).⁵

On November 14, our Office again asked the agency to address the cancellation of the solicitation. Email from GAO to VA and Protester (Nov. 14, 2016). In response, the agency submitted a brief supplemental legal memorandum that included the following:

In this case, the documentation previously submitted, most importantly the contracting officer's statement, documents two critical points relating to this protest: 1) This solicitation was temporarily cancelled and an extension temporarily invoked based on legal advice and managerial direction, 2) The protester has requested no discovery or offered anything further than bare speculation that this brief delay is a pretext to circumvent competition.

Agency Supp. Filing (Nov. 16, 2016). On November 21, our Office again contacted the agency to ask for a "more fulsome response from the agency regarding the cancellation issue." Email from GAO to Agency and Protester (Nov. 21, 2016).

The agency responded on November 23, that "it has produced all relevant documents in its possession. . . The previously submitted legal memorandum is attached. The Agency has nothing further to add." Agency Supp. Filing (Nov. 23, 2016).

On December 2, the GAO attorney held a conference call with the agency and the protester during which she requested that the agency explain the basis for the agency's decision to cancel the solicitation. The agency was also asked to provide greater detail about the contract awarded to Railroad Cleaners, as the contract appeared to be awarded under the solicitation number that the agency ostensibly cancelled.

In response to GAO's request, on December 7, the contract specialist stated:

I received an email from our legal counsel informing me that they did not concur with the award being made due to an issue with the minimum dollar value setting in the award. As the minimum dollar setting was \$2,500,000, we would not be able to make the award to any vendor that submitted a quote under that amount as we were guaranteeing the contractor that at least \$2,500,000 would be spent

⁵ The agency response also included a copy of the solicitation including amendments. Agency Supp. Filing (Nov. 11, 2016).

that year. . . . As there were a number of issues with the solicitation of this contract, I was instructed to cancel the solicitation and begin work on resoliciting. On October 3, 2016, I informed each vendor interested in providing laundry services that the solicitation had been cancelled.

Agency Supp. Filing (Dec. 7, 2016), Tab 4, Contract Specialist's Statement (undated) (emphasis omitted). In the same filing the agency also submitted a statement from a different contracting officer from the one listed on the agency's Nov. 23 response, which stated:

1. During the pre-award review, a warranted supervisory contracting officer reviewed the procurement record. Based on this review, we identified significant errors in the solicitation and determined that VA needed to take corrective action. The nature of the errors was such that the integrity of the procurement process required the solicitation to be cancelled, the errors in the solicitation corrected and the solicitation be reissued.
2. [The agency] is currently moving forward with corrective action in resoliciting the procurement. The long term procurement is anticipated to be awarded on or before March 10, 2017.

Agency Supp. Filing (Dec. 7, 2016), Contracting Officer's Statement (Dec. 5, 2016). The agency failed to address the request by our Office for additional information relating to the contract that was either awarded to Railroad Cleaners, or extended.

DISCUSSION

The protester recognizes that, in a negotiated procurement, an agency may cancel an existing solicitation where it has a reasonable basis for doing so, see, e.g., Blue Rock Structures, Inc., B-400811, Jan. 23, 2009, 2009 CPD ¶ 26 at 2, but argues that in this instance the agency lacked a reasonable basis for its decision to cancel. The protester also contends that the award of a contract to Railroad Cleaners, a firm which it contends always receives these laundry contracts, "foreclosed competition." Protest at 5.

The agency initially argued that it cancelled the solicitation because the solicitation listed a minimum amount of \$1,000,000 for the IDIQ contract to be awarded, and that Walker's quotation was under that amount. Contracting Specialist Statement (Undated/Submitted Nov. 11, 2016.) The agency's rationale for cancelling the solicitation changed somewhat in a later filing where the agency argued that "[a]s the minimum dollar setting was \$2,500,000, we would not be able to make the award to any vendor that submitted a quote under that amount as we were guaranteeing the contractor that at least \$2,500,000 would be spent that year." Agency Supp. Filing (Dec. 7, 2016), Tab 4, Contract Specialist's Statement

(undated) (emphasis omitted). There is no additional explanation regarding the reasonableness of the cancellation.

We find that the agency failed to produce an agency report that coherently addressed the agency's rationale for the cancellation of the solicitation. Rather, as stated above, the agency submitted undated statements from its contract specialist that provided conflicting rationales for the cancellation. Contracting Specialist Statement (Undated/Submitted Nov. 11, 2016; Agency Supp. Filing (Dec. 7, 2016), Tab 4, Contract Specialist's Statement (undated). In addition, documentation provided by the agency does not indicate that the guaranteed minimum was \$2,500,000.

Our Office afforded the agency numerous opportunities to provide its rationale for the cancellation, of which the agency failed to avail itself. In the absence of an adequate agency record to support its actions, and in the absence of any reasonable explanation for its actions, we are left with no option but to make an adverse inference in this matter. See Superlative Technologies, Inc., B-310489.4, June 3, 2008, 2008 CPD ¶ 123 at 12; see Myers Investigative and Security Services, Inc., B-287949.2, July 27, 2001, 2001 CPD ¶ 129 at 2. We therefore conclude that the record here does not establish that the agency had a reasonable basis for the cancellation of the solicitation and sustain the protest.

Regarding the alleged award of a contract to Railroad Cleaners, it appears that the agency was using FAR clause 52.217-8 to extend the performance period of a previously awarded contract. In essence, Walker is challenging the agency's decision to extend Railroad Cleaners' contract rather than issue a competitive solicitation, an agency decision which is appropriate for our review. Test Systems Associates, Inc., B-244007.6, March 29, 1993, 93-1 CPD ¶ 274 at 5. In this regard, the agency never addressed our concern that the solicitation number for the cancelled solicitation, and the solicitation number for the contract awarded to Railroad Cleaners, were identical. To date, the agency has provided no information regarding the contract with Railroad Cleaners, leaving the record unclear about what the agency did, or why. Therefore, we also sustain this basis of protest.

We sustain this protest because the record fails to demonstrate that the agency had a reasonable basis for cancelling the solicitation or for extending the period of performance for the contract of Railroad Cleaners. We recommend, if feasible, re-instating the solicitation, recognizing that the agency may need to amend the solicitation in order to address concerns about the intended value of the anticipated contract. We further recommend that the agency terminate Railroad Cleaners' contract once the new award has been made. We also recommend that Walker be reimbursed the reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time spent and

the costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Susan A. Poling
General Counsel