



## Decision

**Matter of:** Levi Mason Trading

**File:** B-421668

**Date:** August 14, 2023

---

Adam Rickenbach for the protester.

Lesley Walter, Esq., and Mandy W. Chiles, Esq., Defense Logistics Agency, for the agency.

Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

1. Protest seeking payment for partial performance of costs incurred for the solicited flex barrier system is dismissed because the protester's challenge presents a question of contract administration not for our consideration as part of our bid protest function.
2. Protest that agency acted in bad faith in deciding to cancel the procurement is denied where there is no indication in the record that the agency's actions constituted bad faith.

---

### DECISION

Levi Mason Trading, a service-disabled veteran-owned small business located in West Boylston, Massachusetts, protests the decision of the Defense Logistics Agency (DLA) to cancel purchase order No. SPMYM2-23-P-1391, which was issued to Levi Mason without the contracting officer's signature, under request for quotations (RFQ) No. SPMYM223Q1144, for a flex barrier system. The protester argues that it is entitled to payment for partial performance as a result of costs it incurred in procuring the material required to produce the flex barrier system prior to the cancellation. The protester also asserts that the agency's cancellation of the purchase order was improper because it constituted a "breach of fair and honest bid practice."<sup>1</sup> Protest at 5.

We dismiss the protest in part and deny the protest in part.

---

<sup>1</sup> The protester elected to file and pursue its protest *pro se*, that is, without counsel. Therefore, our Office did not issue a protective order in this matter. Accordingly, in certain areas, our discussion is general in nature to avoid reference to non-public information.

## BACKGROUND

DLA issued the RFQ on April 17, 2023, on behalf of the Department of the Navy. The solicitation, which was set aside for small businesses, sought a flex barrier system. Req. for Dismissal, encl. 1, RFQ at 1, 5. Levi Mason submitted a timely quotation in response to the solicitation, and after conducting an evaluation, DLA selected Levi Mason's quotation for issuance of a purchase order. DLA transmitted an unsigned Standard Form (SF) 1449 to Levi Mason on April 27, 2023, in the amount of \$59,739; Levi Mason signed and returned the SF 1449 document the same day. Req. for Dismissal, encl. 1, SF 1449 at 1; Contracting Officer's Statement (COS) at 1.

The next day, April 28, Levi Mason placed an order with its manufacturer for the flex barrier. Protest, attach. 2, Manufacturer Order at 1. That same day, Levi Mason emailed DLA requesting that it "please sign the contract and send it back[.]" Protest, attach. 8, Email to DLA, Apr. 28, 2023 at 1. Receiving no response from DLA, Levi Mason emailed the agency again on May 1 to inquire if it "should be expecting a signed contract from your office?" Protest, attach. 9, Email to DLA, May 1, 2023 at 1.

The following day, May 2, the DLA contracting officer received an email from the Navy customer requesting that DLA cancel the award because the Navy "decided the material [it has] on hand will work for [its] application and [it] no longer need[ed] the Flex Barrier[.]" COS, exh. A, Navy Email to DLA, May 2, 2023 at 1. As a result, that same day, the contracting officer modified the SF 1449 to cancel it. Req. for Dismissal, encl. 2, RFQ Modification at 1.

The protester requested a debriefing from the agency on May, 4, which the agency provided via email on May 10.<sup>2</sup> COS, exh. C, Emails at 1-2. The agency advised Levi Mason that the award was canceled because the "requested material is no longer needed by the end user" and that the Navy customer "requested cancellation prior to the contract award being finalized." *Id.* The agency explained that, while the Navy customer has "agreed to consider and negotiate an administration fee to help offset the vendor's administration cost[,], [n]o other cost [would] be considered for this contract cancellation." *Id.*

On May 12, 2023, Levi Mason filed the instant protest with our Office.

## DISCUSSION

Levi Mason challenges the agency's cancellation of the SF 1449, arguing that it is entitled to payment for partial performance as a result of costs it incurred in procuring the material required to produce the flex barrier system prior to the cancellation. The

---

<sup>2</sup> In making this request, the protester noted: "We really need to know why this contract is being canceled as performance has already started to meet the government's delivery date." COS, exh. B, Emails at 1-2. In this regard, the protester further explained that it "already put a rush on this order and purchase and sales orders have been sent by us as the prime contractor and accepted by the manufacturer." *Id.*

protester also argues that the agency's decision to cancel the procurement constitutes a "breach of fair and honest bid practice." Protest at 5. For the reasons discussed below, we dismiss the protester's request for performance costs as a matter of contract administration that are not for consideration by our Office. As for the second argument, we find no evidence of bad faith by the agency. The protest grounds are therefore dismissed in part and denied in part.<sup>3</sup>

### Contract Administration

The protester argues that it is entitled to payment for partial performance as a result of costs it incurred in procuring the material required to produce the flex barrier system prior to the cancellation. In support of this assertion, the protest highlights the Federal Acquisition Regulation termination for convenience clause, 52.212-4(l), attempts to document partial work performed and costs incurred, and with respect to the relief requested, specifically seeks payment for partial performance of "the contract."<sup>4</sup> See *id.* at 2-5.

Our Office considers bid protest challenges to the award or proposed award of contracts. 31 U.S.C. § 3552. Therefore, we generally do not review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims. Bid Protest Regulations, 4 C.F.R. § 21.5(a). Here, the protester's claim for contract costs--which concerns an agency's post-award business decision--presents an issue of contract administration, which our Office does not review. 4 C.F.R. § 21.5(a). As such, this protest ground is dismissed.

### Bad Faith

In addition to requesting costs for contract performance, Levi Mason contends that the agency's decision not to procure the flex barrier system constitutes a "breach of fair and honest bid practice." Protest at 5. We view the protester's argument as, in essence,

---

<sup>3</sup> Although we do not address all of the protester's arguments in this decision, we have considered all of them, and find no basis to sustain the protest.

<sup>4</sup> We note that although the protest challenges the agency's actions in canceling the SF 1449, which the protester asserts it viewed as a "binding deal," Protest at 3, the record reflects that Levi Mason was never issued an order under the RFQ because the contracting officer never signed the SF 1449 that was sent to Levi Mason. Req. for Dismissal, encl. 1, SF 1449 at 1. Since Levi Mason was not issued an order signed by the contracting officer under the RFQ, Levi Mason's signing of the SF 1449 on April 27, 2023, did not constitute acceptance. See *Dehler Mfg. Co., Inc.-Recon.*, B 416601.2, Feb. 13, 2019, 2019 CPD ¶ 92 (affirming denial of a protest challenging the exclusion of the vendor's quotation where a purchase order lacking the signature of the contracting officer did not constitute the issuance of an order, and thus, the vendor's signing of the order did not constitute acceptance). Thus, an executed purchase order between Levi Mason and DLA did not exist, and could not have been terminated or canceled, as the protester asserts.

alleging the government acted in bad faith. In support of this allegation, the protester points to numerous instances that, in the protester's view, demonstrate bad faith in the government's actions.

For example, the protester points to the agency's actions prior to the cancellation of the SF 1449, noting that there was a "lack of response by the government" after Levi Mason's "repeated requests for signature" of the SF 1449. Resp. to Req. for Dismissal at 1. The protester also contends that the agency's bad faith is reflected by a statement made to Levi Mason's manufacturer by the contract specialist indicating that the government intended to rebid the contract. *Id.* In addition, the protester points to the agency's behavior in several prior procurements, which the protester asserts, should lead to our conclusion that the government's actions in the instant procurement reflect bad faith. *Id.* We find no merit to the protester's arguments.

Government officials are presumed to act in good faith, and a contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials based upon mere inference, supposition, or unsupported speculation. *Lawson Envtl. Servs. LLC*, B-416892, B-416892.2, Jan. 8, 2019, 2019 CPD ¶ 17 at 5 n.5. The burden of establishing bad faith is a heavy one; a protester must present facts reasonably indicating, beyond mere inference and suspicion, that the agency acted with specific and malicious intent to harm the protester. *Id.*

Here, we find no indication in the record that any of the government's actions reflect bad faith. With regard to the protester's assertion that the "lack of response by the government" after Levi Mason's "repeated requests for signature" of the SF 1449 constitutes bad faith, the record reflects that, after receiving the unsigned SF 1449 on April 27, Levi Mason emailed DLA twice (on April 28 and May 1) seeking a signature from the contracting officer before the contracting officer cancelled the SF 1449 on May 2. Protest, attach. 8, Email to DLA, Apr. 28, 2023 at 1; *id.*, attach. 9, Email to DLA, May 1, 2023 at 1. While the protester contends that the agency should have signed the contract immediately (or more quickly), the protester has not demonstrated and the record does not reflect that the agency's failure to do so was motivated by bad faith on the part of agency officials.

The protester also contends that the agency's bad faith is reflected by a statement made to Levi Mason's manufacturer by the government contract specialist after the cancellation that the government does in fact intend to rebid the contract. Resp. to Req. for Dismissal at 1. The protester, however, provides no evidence to support its assertion that the contract specialist made such a statement to the manufacturer. *Id.* Moreover, the protester's assertion that the agency intends to "rebid the contract" is not supported by the record which indicates that the Navy does not need the flex barrier. COS, exh. A, Navy Email to DLA, May 2, 2023 at 1 (stating that the flex barrier is "no longer need[ed]"); *id.*, exh. C, Debriefing Email, May 10, 2023 at 1 ("The requested material is no longer needed by the end user."); Supp. COS, July 20, 2023 at 2 (representation from the contracting officer that "since May 2, 2023, up to and including the present date, I have received no communication from the customer, the U.S. Navy, that it wishes to reprocur the flex barrier system."). As referenced above, we will not

attribute unfair or prejudicial motives to procurement officials based upon mere inference, supposition, or unsupported speculation. *Lawson Env'tl., supra*. Here, the protester's speculative assertion fails to demonstrate bad faith.

Finally, the protester points to the agency's behavior in prior procurements concerning other vendors to demonstrate bad faith. For example, the protester asserts that "according to our manufacturer, [DLA] decided to try to sole source the material needed for this [requirement] in years past when there are other options in the area." Resp. to Req. for Dismissal at 1. The protester also alleges that the contracting officer unreasonably "rejected the quote" of another vendor in a prior procurement for the same requirement "for [the] color being cream not brown." Resp. to COS at 2. The protester, however, again fails to provide any evidence to support its assertions. The protester also fails to demonstrate, or even assert, how the agency's behavior in these prior procurements reflects bad faith by the agency here. We find the protester's allegations do not meet the high threshold for demonstrating bad faith or improper conduct on the part of the agency. The protest ground is denied.

The protest is dismissed in part and denied in part.

Edda Emmanuelli Perez  
General Counsel