



Decision

Matter of: Davenergy-VCI JV, LLC

File: B-423332

Date: April 29, 2025

Nicholas Nazarko, Davenergy-VCI JV, LLC, for the protester.
Matthew R. Keiser, Esq., and Elisabeth A. Dixon, Esq., Department of the Army, for the agency.
Charmaine A. Stevenson, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's cancellation of a solicitation for architectural engineering construction management services for multiple projects is denied where the agency determined that the most immediate project had been eliminated from the requirement, the next scheduled project would not commence until at least a year later, and funding was not available to make an award.

DECISION

Davenergy-VCI JV, LLC, a small business of Apex, North Carolina, protests the cancellation of solicitation No. W9127N24R0029, issued by the Department of the Army, Army Corps of Engineers, for architectural engineering construction management services for medical facility construction projects required by the Department of Veteran Affairs (VA) in Oregon and Washington. The protester contends that the agency's cancellation of the solicitation is unreasonable and improper.

We deny the protest.

BACKGROUND

On March 1, 2024, using Federal Acquisition Regulation (FAR) subpart 36.6 procedures, the Army Corps of Engineers issued the synopsis seeking an architect-engineer firm to provide construction management services "to build medical facilities that serve our Veterans throughout the state[s] of Oregon and Washington." Contracting Officer's Statement (COS) at 1; Agency Report (AR), Tab 3, Synopsis at 1. The synopsis contemplated the award of a single indefinite-delivery, indefinite-quantity

(IDIQ) contract with a period of performance of five years, beginning on the date of contract award, and a “total capacity” of \$25 million. *Id.* at 2.

The synopsis further stated that the IDIQ contract would have a minimum guaranteed amount of \$10,000, a minimum task order amount of \$3,000, and that “[m]ultiple task orders are anticipated to be awarded between \$1M and \$5M in support of this project.” *Id.* The synopsis identified six upcoming VA projects as follows:

Location	Construction Contract Type	ECC (DFARS 236.204) ¹
Portland [District VA (DVA)] Phase 2	Design-Build	Over \$500,000,000
White City Package 1	Design-Build	\$250,000,000 - \$500,000,000
White City Package 2	Design-Bid-Build	\$25,000,000 - \$100,000,000
Roseburg VA	To be determined (TBD)	\$250,000,000 - \$500,000,000
America Lake VA	TBD	TBD
Seattle VA	TBD	TBD

Id. at 3. On September 27, 2024, the agency advised the protester that it was found to be the most highly qualified firm, and the agency would send a formal solicitation in the coming weeks. Protest at 5. However, on February 13, 2025, the agency informed the protester: “Unfortunately, the U.S Army Corp of Engineers, Portland District, needs to cancel the subject requirement and solicitation in its entirety in accordance with FAR 15.206(e). Should a similar requirement be identified in the future a new solicitation will be issued.” *Id.* at 6. This protest followed.

DISCUSSION

The protester argues that the decision to cancel the solicitation is unreasonable and unjustified by the agency. Protest at 2. The agency responds that cancellation of the solicitation was reasonable because some of the anticipated projects have been canceled and it does not otherwise have the funding to support the requirement. For the reasons discussed below, we find the agency reasonably canceled the solicitation and deny the protest.

As an initial matter, the protester contends, and the agency concedes, that FAR section 15.206(e) is inapplicable and improperly cited in the cancellation letter.² Protest at 6;

¹ The FAR requires that a solicitation state the estimated cost of construction (ECC) “in terms of physical characteristics and estimated price range.” FAR 36.204. The Department of Defense FAR Supplement (DFARS) prescribes additional price ranges exceeding \$10,000,000. DFARS 236.204.

² That FAR section states: “If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could
(continued...)”

Req. for Dismissal at 1. However, the agency argues that even if FAR section 15.206(e) was incorrectly cited, this error does not constitute a procurement violation where a reasonable basis for cancellation of the solicitation otherwise exists. We agree. As discussed below, the record shows that the agency canceled the solicitation because the requirements changed, and it no longer had funding to proceed with an award. Accordingly, we dismiss this allegation.³ See *U.S. Marine Mgmt., Inc.*, B-417353.3, B-417353.4, Sept. 23, 2019, 2019 CPD ¶ 346 at 4 (“[N]ew or additional rationale justifying the cancellation of a solicitation provided by an agency during the development of a protest is acceptable so long as it would have supported cancellation had it been advanced originally.”).

Regarding cancellation of the solicitation, the agency explains that the most immediate requirements have been canceled by the Portland District VA and associated funding returned to the VA, and the next scheduled project listed in the synopsis will not occur for well over a year. Req. for Dismissal at 2; COS at 1 (¶¶ 2 and 4). Specifically, the contracting officer states: “I canceled the Solicitation due to the removal of Portland DVA Phase 2 as a requirement and because the first requirement [White City Package 1] would now not be needed until May 2026 at earliest.” *Id.* (¶ 6). The contracting officer further states that the VA has not yet provided funding to the Corps for the construction phase of White City Package 1 or for any of the remaining projects included in the synopsis.⁴ Supp. COS at 1 (¶¶ 3 and 4).

have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.” FAR 15.206(e). As discussed in this decision, a change in the requirements did not exceed what prospective offerors reasonably could have anticipated; to the contrary, requirements were removed from the procurement. Moreover, the agency did not propose to issue an amendment to the solicitation. Accordingly, FAR section 15.206(e) is not applicable to this procurement.

³ The protester also argues that a “dismissed size protest” and “unusual circumstances surrounding the lack of communication from [the agency],” including a change in the contracting officer assigned to the procurement, are “highly irregular.” Protest at 3. In this regard, the record shows that a challenge to the size status of the protester, filed on November 15, 2024, was subsequently dismissed by the Small Business Administration as untimely and was unrelated to the agency’s decision to cancel the solicitation. Supp. COS at 1 (¶ 1). Moreover, the protester’s general dissatisfaction with the frequency or content of the agency’s communications fails to establish that a violation of procurement statute or regulation occurred. Accordingly, we find this allegation to be legally and factually insufficient and therefore dismiss it. 4 C.F.R. §§ 21.1(c)(4), 21.5(f).

⁴ The agency also explains that VA projects are funded using interagency agreement forms that give the Corps the authority to spend VA funds, and that the agreement associated with this project was modified to return all funding to the VA. Supp. COS at 1 (¶ 2).

In rebuttal, the protester contends that proceeding with the solicitation is justified because it will ensure that the contract is in place before the White City Package 1 project begins, and the remaining projects further justify proceeding with the solicitation and contract negotiation and award. Resp. to Req. for Dismissal at 1 (“Two of the noted projects are over \$250 million dollars. Even with a conservative estimate of typical construction management contracts for this Agency, either one of those projects justify this IDIQ by themselves.”). The protester further contends that it is “not unusual for indefinite delivery contracts to be awarded and not used for a period of time due to fluctuating requirements – this is the reason to award this flexible contract in the first place.” Resp. to Supp. COS at 2.

In a negotiated procurement, such as the one here, a contracting agency has broad discretion in deciding whether to cancel a solicitation and need only establish a reasonable basis for doing so. See *T.W. Recycling*, B-413256, Sept. 16, 2016, 2016 CPD ¶ 261 at 4; *SupplyCore Inc.*, B-411015.8, May 27, 2016, 2016 CPD ¶ 153 at 3. A reasonable basis to cancel exists when an agency determines that a solicitation does not accurately reflect its needs. *RCR Props., G.P.*, B-414590, July 21, 2017, 2017 CPD ¶ 231 at 3. For example, cancellation of a procurement is reasonable when the agency determines that it no longer has a requirement for the item solicited. *Lasmer Indus., Inc.*, B-400866.2 *et al.*, Mar. 30, 2009, 2009 CPD ¶ 77 at 4-5.

It is also well established that an agency’s lack of funding for a procurement provides a reasonable basis for cancellation, as agencies may not award contracts that exceed available funds. *Welch Constr., Inc.*, B-411879, Nov. 9, 2015, 2015 CPD ¶ 351 at 2; *VetPride Servs., Inc.*, B-401435, July 28, 2009, 2009 CPD ¶ 156 at 2. It is not our role to question the unavailability of funds. *Welch Constr., Inc.*, *supra*; *VetPride Servs., Inc.*, *supra* at 3. Rather, the management of an agency’s funds generally depends on the agency’s judgment concerning which projects and activities should receive increased or reduced funding. *T.W. Recycling*, *supra*. Moreover, an agency may properly cancel a solicitation regardless of when the information precipitating the cancellation first surfaces or should have been known. *Henry’s Aerial Serv., Inc.*; *Evergreen Flying Servs., Inc.*, B-414238.7; B-414238.9, Aug. 10, 2017, 2017 CPD ¶ 257 at 5.

Here, the synopsis stated that the architect-engineer firm would be required to review and validate work performed under construction contracts awarded for the upcoming VA projects. Synopsis at 1 (“The contractor awarded this [construction management services architectural-engineering single-award task order contract] will be required to review and validate work performed under construction contracts[.]”); *id.* at 3 (“Work may be performed on VA mega construction, VA general construction, or VA services and supply contracts to monitor contractor progress and document compliance with the plans, specifications, and ancillary documents.”). The record shows that approximately four months after the protester was selected as the most highly qualified firm, the Corps was directed by the VA to cancel the solicitation and return the funding for the Portland DVA Phase 2 project, the first anticipated project included in the synopsis. AR, Tab 7, Letter from VA to Army, Jan. 22, 2025. The record further shows that funding for the Portland DVA Phase 2 project was returned to the VA and was the only funding ever

provided to the Corps for any of the upcoming VA projects included in the synopsis. Supp. COS at 1 (¶ 4). Thus, we find reasonable the agency's decision to cancel the solicitation where the initial project was no longer required, and the agency represents it does not currently have funding to make an award.

The protester also argues: "The cancellation of Portland DVA phase 2 (January 22, 2025) did not happen for almost [four] months after our selection, and this seems to be the sole reason given for the cancellation. It appears to us there is some other pretextual reason for the delays and subsequent attempted cancellation that we are not aware of." Resp. to Supp. COS at 3. According to the protester,

Re-advertising the same requirement in the near future for work just over [one] year away is wasteful to the Government, as well as introducing significant risk that the contract and accompanying task order would not be placed in time for the potential requirement. This scenario would cause unnecessary re-work on behalf of the industry and more importantly, wasting Government resources managing another lengthy procurement process that was already advertised, evaluated, interviewed, and selected. The Government and each industry respondent will spend significantly more than the \$10,000 guaranteed minimum that seems to be at issue here.

Id.

As discussed, an agency may properly cancel a solicitation regardless of when the information precipitating the cancellation first surfaces or should have been known, even if the solicitation is not canceled until after proposals have been submitted and evaluated, or even after a contract has been awarded. *Bear Mountainside Realty, LLC*, B-419989.6, B-419989.7, Feb. 28, 2023, 2023 CPD ¶ 59 at 8. In this case, we do not find the lapse in time between the protester's selection and the cancellation of the solicitation--a four-month period during which a size protest occurred--to be a significant delay. Indeed, the concern raised by the protester, namely that time and resources will be wasted by the cancellation, could only be further compounded if the agency were to proceed with the solicitation and none of the upcoming projects are funded by the VA in the future. As stated, it is not our role to question the unavailability of funds. *Welch Constr., Inc., supra*; *VetPride Servs., Inc., supra* at 3. There is nothing in the record to support the protester's claim that delays in issuing the solicitation and its subsequent cancellation indicate the agency's actions are pretextual and given that government officials are presumed to act in good faith, we find no merit to these allegations. See *Bear Mountainside Realty, LLC, supra* at 9.

In sum, the initial project included in the synopsis was no longer required, the next project is not planned to commence for over a year, and the agency represents that it currently lacks funding for any of the remaining project requirements. Under these

circumstances, we find no basis to conclude that the agency's decision to cancel the solicitation was unreasonable or improper.

The protest is denied.

Edda Emmanuelli Perez
General Counsel