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**Comptroller General
of the United States**

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

Decision

Matter of: SEI Group, Inc.

File: B-299108

Date: February 6, 2007

Eloy J. Torrez for the protester.

Audrey H. Liebross, Esq., Federal Emergency Management Agency, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging cancellation of solicitation is denied where the record supports the agency's assertion that by canceling the solicitation the agency could save money, enhance competition, and increase its purchasing flexibility.

DECISION

SEI Group, Inc. protests the Federal Emergency Management Agency's (FEMA) decision to cancel request for proposals (RFP) No. HSFEEEM-06-R-0020 for base camp services. SEI asserts that the agency should have amended rather than canceled the solicitation because the contemplated changes to the solicitation are not significant and the agency's requirements have not changed. SEI also challenges the timing of the cancellation.

We deny the protest.

On April 30, 2006, FEMA issued the solicitation as a small business set-aside contemplating award of multiple indefinite-delivery/indefinite-quantity contracts for setting up and operating base camps to house personnel deployed in anticipation of domestic disasters. The solicitation divided the service area into four geographic regions covering the entire country. Prior to the proposal due date of May 4, 2006, the agency amended the solicitation to add line items for phase-in and readiness costs.

In mid-July, the source evaluation board (SEB) completed review of the 46 proposals received in response to the RFP and also decided to reexamine its requirements; the hurricane season had already begun and FEMA had concerns about the costs that would be incurred for readiness and phase-in activities. Discussions between the head of the SEB and agency management produced a number of options, one of

which was to make award for geographic area 3 only, which was continuing to recover from Hurricanes Katrina and Rita. The SEB reconvened, adopted the option of making award for area 3 only, and recommended awards to the protester and one other offeror. On August 24, the agency referred the two offerors to the Small Business Administration (SBA) for review under the certificate of competency (COC) procedures. On August 29, the SBA in the course of its COC review notified the agency that the second offeror was not eligible for award as a small business and therefore not eligible for a COC, leaving only SEI in the competition. The agency ultimately concluded that the solicitation no longer accurately reflected its needs in that it could not justify incurring phase-in and readiness costs as the end of the hurricane season neared. The agency also expressed concern that because the protester was the only remaining offeror, it would be required to provide services to all five base camps. On September 14, the agency canceled the solicitation.

SEI asserts that FEMA should have amended rather than canceled the solicitation. The protester contends that, because the agency added the line items for phase-in and readiness by amending the solicitation, an amendment to remove those same provisions would not be a significant enough change to warrant canceling the solicitation. Further, SEI argues that the agency's requirements in fact have not changed and that the agency will issue another solicitation to construct, operate, and maintain base camps. Even if the agency had proper grounds to cancel the solicitation, SEI contends, the agency should have canceled the solicitation after receiving the initial proposals and before asking for additional information from offerors. As explained below, we find the agency's decision to cancel the solicitation was proper.

In a negotiated procurement, where one or more of the offerors' prices have been revealed, an agency may properly cancel a solicitation where the record contains plausible evidence or reflects a reasonable possibility that a decision not to cancel would be prejudicial to the government or the integrity of the procurement system. Noelke GmbH, B-278324.2, Feb. 9, 1998, 98-1 CPD ¶ 46 at 3-4. Here, we conclude that the agency's decision to cancel the solicitation was proper. First, the record shows that the agency's needs had changed because it could no longer make good use of the phase-in and readiness provisions so late in the hurricane season and that any amendment to the solicitation to delete these requirements would have been so substantial that offerors could not have reasonably anticipated the changes. An agency has a reasonable basis to cancel a solicitation where, as here, it determines that a solicitation does not accurately reflect its needs. Logistics Solutions Group, Inc., B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 3.

Second, the agency states that, by waiting to reissue the solicitation to coincide with the start of the 2007 hurricane season, it could avoid paying start-up costs for base camps that would have seen limited use in the 2006 hurricane season. Cost savings through a restructuring of the agency's requirements also constitute a reasonable basis to cancel a negotiated procurement, even after the agency has entered into negotiations with the potential awardee. Capitol Gateway Assocs. Ltd. P'ship, B-255587, Jan. 24, 1994, 94-1 CPD ¶ 37 at 2-3.

Third, the agency asserts that its plan to eliminate the requirement that the offerors be prepared to operate five base camps simultaneously will increase competition by fostering the involvement of smaller firms capable of performing contracts of a more limited scope.¹ The ability to enhance competition is a reasonable basis to justify the cancellation of the solicitation. *Id.* at 3. In fact, as the agency notes, when “an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated,” and competition would be enhanced if the contacting officer canceled the solicitation and issued a new one, the agency is required to cancel the solicitation. Federal Acquisition Regulation § 15.206(e).

In summary, the record supports the agency’s assertions that its decision to cancel rather than amend the solicitation will assist the agency in controlling costs and fostering competition through a solicitation that more accurately reflects the agency’s needs; each of these reasons supports a finding that the agency’s cancellation decision was proper.

The protester asserts that the agency should have canceled the solicitation after the receipt of initial proposals and before requiring additional effort on the part of the offerors. So long as there is a reasonable basis for doing so, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until proposals have been submitted and evaluated. *Glen/Mar Constr., Inc.*, B-298355, Aug. 3, 2006, 2006 CPD ¶ 117 at 2. The agency completed review of 46 proposals for this new requirement in approximately 10 weeks. It was not until approximately 6 weeks later, near the end of August, that the agency faced the choice of canceling the solicitation or making award to one firm, for all five base camps, for the closing weeks of the 2006 hurricane season. The agency deliberated for approximately 2 weeks before making the decision to cancel the solicitation. On this record, we simply see no support for the protester’s claim that the agency unreasonably delayed canceling the RFP.

Finally, the protester’s argument that because phase-in and readiness costs were added to the solicitation by amendment they could (and should) be removed by amendment, does not provide any basis to question the agency’s action. The agency has expressed no intention to procure base camp services next year without paying phase-in and readiness costs; by canceling the solicitation the agency merely sought to avoid the wasteful payment of phase-in costs so late in the 2006 hurricane season.

¹ The protester does not challenge the agency’s reasoning. Rather, the protester asserts that the solicitation only required offerors “to be prepared” to support five base camps and not to actually establish those five camps. Protester’s Comments at 4. The protester is mistaken; in fact, the RFP states that the “contractor shall set up and operate multiple turn key base camps.” Agency Report, Tab 3, Performance Work Statement at 1.

The possibility that the agency will issue the same solicitation in the future also does not invalidate the agency's decision to cancel. Even ignoring the substantive changes that the agency has indicated that it will make to the solicitation and assuming that the agency canceled the solicitation with the intent to issue an identical one in the future, such a cancellation is not, in and of itself, objectionable. See G.K.S. Inc., B-235208, Aug. 9, 1989, 89-2 CPD ¶ 117at 3 (noting that agency may cancel solicitation and reissue it if cancellation will increase competition).

The protest is denied.

Gary L. Kepplinger
General Counsel