



Decision

Matter of: Zia Engineering & Environmental Consultants, LLC; Garrison Engineering & Maintenance Services, LLC

File: B-400127

Date: August 7, 2008

Edward H. Martinez, for Zia Engineering & Environmental Consultants, LLC, and Garrison Engineering & Maintenance Services, LLC, the protesters.

Maj. David Abdalla, Department of the Army, for the agency.

Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's cancellation of a solicitation for base operations support and logistics services, under a public-private competition pursuant to Office of Management and Budget Circular No. A-76, is denied where the record shows that the decision to cancel was reasonably based on a conclusion that the solicitation no longer reflects the agency's actual needs because future mission demands will significantly increase those needs.

DECISION

Zia Engineering & Environmental Consultants, LLC and Garrison Engineering & Maintenance Services, LLC protest the cancellation of request for proposals (RFP) No. W9124R-07-R-0009, issued by the Department of the Army pursuant to Office of Management and Budget (OMB) Circular No. A-76 for base operations and logistics services at the U.S. Army Garrison White Sands Missile Range (WSMR), New Mexico.

We deny the protests.

In July 2006, the Army announced its intent to conduct an A-76 cost comparison study regarding WSMR's public works and logistical functions. Pursuant to that announcement, on February 28, 2008, the Army issued the RFP to potential private sector offerors with an April 24 due date for receipt of proposals. Thereafter, on March 19-20, the agency conducted a site visit and held a pre-proposal conference for potential offerors.

Meanwhile, on March 7, the Director of the Installation Management Command (IMCOM) for the Western Region sent the Commanding General for IMCOM a formal request for authorization to cancel the WSMR solicitation. In making the request, the Director identified various significant changes that had occurred since the A-76 study had begun, such as, the Army's announced plans to station the 2d Engineering Battalion at WSMR, and the addition of a Heavy Brigade Combat Team to WSMR. In addition, the Director noted a staffing shortfall at WSMR exacerbated by the remote location of the garrison, as well as the ongoing A-76 study. Agency Report (AR) exh. 8, Letter from the IMCOM Director, at 1-3 (Mar. 7, 2008). Thereafter, on March 21, the Assistant Secretary of the Army sent a memorandum to the Deputy Under Secretary of the Department of Defense (DoD) seeking approval of IMCOM's request to cancel the WSMR A-76 competition. *Id.* exh. 10, Memorandum from Army to DoD (Mar. 21, 2008).

On April 22, the contracting officer (CO) received an email from IMCOM directing the cancellation of the A-76 competition. AR exh. 15, Email to CO. That same day, the CO issued amendment No. 0003 canceling the solicitation and distributed the amendment, by email, to the protesters and other site attendees. *Id.* exh. 14, Email from CO (Apr. 22, 2008). However, on April 22 the agency had already received proposals from Zia and GEMS, but had not opened them since cancellation occurred prior to the scheduled closing date of April 24.

In response to the protesters' request for an explanation of the decision to cancel the solicitation, the contracting officer stated that:

Increased mission demands and future restationing efforts risk mission failure due to support of additional installation requirements while simultaneously conducting an A-76 competition.

The Army recently unveiled its Grow the Army plan which includes restationing a Brigade Combat (Heavy) Team, the 2d Engineering Battalion, and expanding the Army Test and Evaluation Command mission. Support to these additional units present a tremendous challenge to the already-taxed WSMR workforce. In addition, WSMR is an isolated site with limited ability to attract and retain a quality workforce. Over the past several months, WSMR faced significant staffing challenges due to the current public works/logistics functions A-76 competition. Current on-board personnel are exiting in advance of the competition's results and recruitment efforts are very difficult since personnel are hesitant to apply for a position under competition. Consequently, WSMR has not filled over 40 key positions within its public works and logistics directorates.

Given the above circumstances, which placed WSMR at a significant risk of mission failure, the IMCOM leadership requested relief from

continuing a competition which was severely limiting the garrison's ability to support current and near term mission growth.

AR exh. 17, CO Letter to the Protesters, at 1-2 (Apr. 29, 2008).¹ These protests followed.

The protesters contend that the cancellation was improper because the agency did not disclose to potential private sector offerors that agency officials had requested cancellation of the A-76 competition. In the protester's view, it was unfair to ask private sector offerors to expend resources to respond to the RFP while the agency was actively seeking to cancel the ongoing cost comparison study. Protest at 2-5; Protesters' Comments at 2, 5.

Where an agency determines that a solicitation does not accurately reflect its needs, cancellation is appropriate. Rice Servs., Ltd., B-284997.5, Mar. 12, 2002, 2002 CPD ¶ 59 at 4. A contracting agency need only establish a reasonable basis to support a decision to cancel an RFP; this authority extends to the cancellation of solicitations used to conduct A-76 cost comparisons. IT Corp., B-289517.3, July 10, 2002, 2002 CPD ¶ 123 at 3. So long as a reasonable basis exists to exercise this authority, an agency may cancel a solicitation regardless of when the information first arises or should have been known, even if the solicitation is not canceled until after proposals have been submitted and evaluated, or even if discovered during the course of a protest. Glen/Mar Constr., Inc., B-298355, Aug. 3, 2006, 2006 CPD ¶ 117 at 2; Global Solutions Network, Inc., B-289342.4, Mar. 26, 2002, 2002 CPD ¶ 64 at 3.

As discussed above, the record shows that due to the agency's increased mission demands caused by the future addition of two military units, the agency determined that the solicitation no longer reflected its actual needs. Given that the additional military units will significantly increase the total population at WSMR, which would then impact the scope of base operating and logistics services required at the garrison, we find that the agency has demonstrated a reasonable basis for its decision to cancel this procurement. See Satellite Servs., Inc., B-288848.3, Apr. 28, 2003, 2003 CPD ¶ 88 at 14.

We also find no basis to grant the protesters' request to recover their costs for competing in this procurement. The Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1) (2000), and our implementing regulations, 4 C.F.R. § 21.8(d) (2008), provide for our Office to recommend reimbursement of proposal preparation costs only where we determine that "a solicitation, proposed award, or award does not comply with statute or regulation." The fact that the agency was seeking permission to cancel the procurement, while simultaneously conducting it, does not

¹ This letter acknowledged that, as requested by the protesters, their unopened proposals were returned.

render unreasonable an otherwise appropriate basis for canceling. Since the cancellation here was proper, and there is no other reason to conclude that the agency has acted contrary to statute or regulation, we have no basis to recommend the recovery of proposal preparation costs. See Bahan Dennis Inc., B-249496.3, Mar. 3, 1994, 94-1 CPD ¶ 184 at 6.

The protests are denied.²

Gary L. Kepplinger
General Counsel

² We recognize the harshness of this result, and would have preferred that the agency provide notice of its deliberations so that businesses could assess for themselves the risk of writing a proposal to perform the work. On the other hand, we also recognize that agencies are under significant pressures in this area, including pressure to complete cost comparison studies expeditiously once they are begun. See e.g., Alan D. King, B-295529.6, Feb. 21, 2006, 2006 CPD ¶ 44 at 6 n.7. Under these circumstances, we think private sector contractors participating in public-private competitions bear a certain amount of risk that circumstances could change before the cost comparison study is completed.