

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE:

B-214186

DATE: July 23, 1984**MATTER OF:**

Security Management Associates

DIGEST:

Agency's cancellation of a solicitation after bid opening was proper when it was discovered that an item similar to that covered in the solicitation, and which would meet the agency's minimum needs, would be on a Federal Supply Schedule from which the agency was required to make purchases.

Security Management Associates protests the cancellation of invitation for bids (IFB) No. DABT15-83-B-0068 issued by the U.S. Army Finance & Accounting Center at Fort Benjamin Harrison, Indiana, for credit reports concerning out-of-service personnel. The IFB was canceled after bid opening when the contracting officer became aware of a proposed General Services Administration (GSA) mandatory Federal Supply Schedule that included services the agency maintains are similar to those called for under the IFB. The protester contends that the agency lacked a compelling reason to cancel.

We deny the protest.

The low bidder in response to the IFB was permitted to withdraw its bid based on a claim of mistake. The agency then determined that Security Management, the second low bidder, was nonresponsible and, since Security Management is a small business, referred the matter to the Small Business Administration (SBA) for review under the SBA's certificate of competency (COC) procedures. By letter dated November 29, 1983, the SBA notified the agency of intended affirmative action on the COC and the agency in turn advised the SBA, on January 6, 1984, that it wished to appeal the SBA's proposed action.

In the second week of January, the contracting officer became aware of a GSA solicitation, issued

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December 8, 1983, to establish a mandatory Federal Supply Schedule for obtaining credit report data services for the period March 1, 1984 through February 28, 1985, and of accompanying guidelines issued by the Office of Management and Budget (OMB). Because the services involved in the GSA procurement were similar to those the Army required, and because the Federal Supply Schedule was mandatory, the Army canceled the contracting officer's appeal of the SBA's intended affirmative action on the COC and, on January 13, canceled the solicitation.

Security Management protests the cancellation of the solicitation and the proposed purchase of the required credit reports under the GSA schedule. According to the protester, the purpose of the GSA schedule is to obtain information to determine the reliability of future debtors, while the purpose of the Army solicitation is to obtain information concerning the ability of existing debtors to repay their debts to the government. The protester further contends that the mandatory aspects of the GSA schedule therefore do not apply to the services sought by the Army because an OMB Memorandum for Debt Collection Officials dated January 3, 1984, states that "[i]nvestigative reports, such as . . . asset and income reports . . . will not be covered by the GSA schedule." Security Management maintains that the Army was actually motivated to cancel by a desire to prevent Security Management from receiving the award.

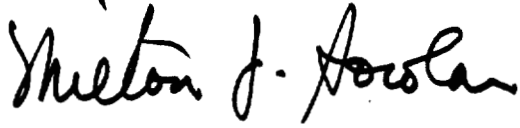
The Army argues that since an item similar to that being procured was to be listed on a mandatory Federal Supply Schedule, a competitive procurement was prohibited. The Army states that it was required by the procurement regulations that govern purchases from Federal Supply Schedule contracts, 41 C.F.R. § 101-26.401 et seq. (1983), to purchase the credit reports under the GSA schedule. In this regard, the agency points out that 41 C.F.R. § 101-26.401-3 requires procurement through a GSA schedule even for similar items.

We find no legal merit to Security Management's suggestion that the Army's needs will not be satisfied through use of the Federal Supply Schedule. The determination of the needs of the government and the method of accommodating them is primarily the responsibility of the procuring agency, and such a determination therefore

will not be questioned by our Office unless there is a clear showing of unreasonableness. Dictaphone Corporation, B-192305, Dec. 22, 1978, 78-2 CPD ¶ 431. While there may be differences between the way the Army's needs are described in the IFB and the GSA description of the services on the Federal Supply Schedule, we have no legal basis to question the Army's decision that its needs can be fulfilled by ordering the services offered by the schedule contractors. Furthermore, even though it may have been permissible under the OMB guidance and GSA solicitation for the Army to proceed with award of its own contract (a point we do not decide), once the Army made the decision that its needs could be met under the schedule contract, it was not required to proceed with its own procurement. Therefore, in the absence of any affirmative evidence that the IFB was canceled to prevent the protester from receiving the award, we cannot conclude that the Army canceled the solicitation based on other than proper consideration.

The protester also complains that the Army administrative report in response to this protest was not filed within the time frame specified in our Bid Protest Procedures. Under our Procedures, we request an agency to submit a report on a bid protest as expeditiously as possible--generally within 25 working days. 4 C.F.R. § 21.3(c) (1984). Here, more than 3 months elapsed between our request to the Army for a report and our receipt of that report. Nevertheless, we have held that under our current procedures the late receipt of an agency report does not provide a basis for disregarding the substantive information in the report or for sustaining the protest on an inadequate record. Philadelphia Biologics Center, B-209660, June 1, 1983, 83-1 CPD ¶ 589. Moreover, in view of our conclusion that the cancellation was proper, Security Management was not prejudiced by the lateness of the report.

The protest is denied.

for 
Comptroller General
of the United States