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**Comptroller General
of the United States**

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

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Decision

Matter of: Applied Resources, Inc.

File: B-400144.7; B-400144.8

Date: July 31, 2009

James D'Agostino, Esq., Richard L. Moorehouse, Esq., and Sean M. Connolly, Esq., Greenberg Traurig, LLP, for the protester.

Vera Meza, Esq., U.S. Army Materiel Command, for the agency.

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

DIGEST

Protest challenging agency's decision to cancel solicitation is denied where the cancellation decision was reasonably based on determination that the agency's requirements have changed since the time the solicitation was issued.

DECISION

Applied Resources, Inc. (ARI) of Rosslyn, Virginia, protests the Army's decision to cancel request for proposals (RFP) No. W91CRB-08-R-0001 for research and analytical services in support of the Test & Evaluation Threat Resource Activity (TETRA), an organizational element within the Defense Intelligence Agency located at the Missile and Space Intelligence Center at Redstone Arsenal in Huntsville, Alabama.

We deny the protest.

On December 13, 2007, the Army issued the RFP as a small business set-aside seeking proposals for research and analytical services in support of TETRA with respect to eight principal areas: (1) Threat Information Analysis and Intelligence Support; (2) Threat Representation Validation; (3) Threat Systems Program; (4) Foreign Material Acquisition and Exploitation; (5) Financial Management; (6) Working Groups, Specialized Studies, Analyses, and Other Mission-Related Functions; (7) Automated Joint Threat Systems Handbook; and (8) Director of Operational Test and Evaluation Database. RFP, Statement of Work. The RFP contemplated the award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract with a 1-year base period of performance plus three 1-year option periods.

The Army received proposals from four offerors by the RFP's January 24, 2008 closing date. Upon completing its evaluation, the Army notified ARI in April 2008 that it intended to make award to El Poco Enterprises. ARI subsequently filed a protest with the Small Business Administration (SBA) challenging El Poco's size status; ARI also filed a protest with our Office challenging the Army's evaluation and selection decision. The SBA determined that El Poco did not qualify as a small business and therefore was ineligible for award. In July 2008, the Army informed our Office that it intended to terminate El Poco's award and we dismissed ARI's protest as academic. Approximately 6 months later, on January 13, 2009, the Army made award to Will Technology, Inc. (WTI), which was identified as next in line for award under the solicitation. ARI then filed a protest challenging the Army's second award decision. In its protest, ARI argued that WTI's proposal was not in compliance with the rules regarding limitations on subcontracting by small business concerns, *i.e.*, the "50 percent rule." The Army took corrective action for a second time on March 31, 2009, representing that it intended to terminate WTI's contract. We dismissed ARI's protest as academic on April 3, 2009. Thereafter, rather than making award to ARI, the next in line offeror, the Army decided to cancel the solicitation and issue a new solicitation at a future date. While TETRA prepares to issue the new solicitation, it is obtaining contractor support services through a delivery order awarded by the Defense Intelligence Agency, Missile and Space Intelligence Center, under an existing ID/IQ contract, and is also receiving support from Air Force Reservists and government interns.

On May 6, 2009, ARI filed its third protest challenging the Army's cancellation decision. ARI argues that the agency's decision did not have a reasonable basis.¹ We disagree.

In a negotiated procurement such as this one, a contracting agency has broad discretion in deciding whether to cancel a solicitation, and need only establish a reasonable basis for doing so. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs, or where there is a material increase in the services needed to satisfy the agency's requirements; in such cases, cancellation of the solicitation and issuance of a revised solicitation is appropriate. Logistics Solutions Group, Inc., B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 3.

¹ ARI also argues that the cancellation decision was a pretext to avoid having to make award to ARI. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference and supposition. Logistics Solutions Group, Inc., B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 4. Here, we find that ARI's pretext arguments, which ARI characterizes as "bias," are based on mere inference and supposition and that there is no evidence of unfair or prejudicial motives on the part of the agency's procurement officials to avoid making award to ARI.

Here, the Chief of TETRA has represented that since the time the solicitation was issued in December 2007, “TETRA’s mission has evolved to become focused on threat resource adequacy” and, as a consequence, TETRA “will require more technical support . . . rather than the programmatic support as solicited in 2007.” Declaration of Chief of TETRA, Aug. 21, 2009. In addition, TETRA explained that it needed to reassess its support requirements in light of in-sourcing efforts, which include the augmentation of TETRA’s permanent workforce with “interns and Air Force Flight 199 [Reservists] with up to 2 [full time equivalents].” *Id.* Based on the change in requirements, TETRA withdrew funding from the Army for the solicitation to allow TETRA time to develop new requirements, which will be issued under a new solicitation at a future date.

In response, ARI, as a general matter, challenges the notion that TETRA’s mission has “evolved” to focus more on “threat resource adequacy.” In this regard, ARI identifies specific instances dating to 2007 where the term “adequacy” has been associated with TETRA’s mission as it relates to “test adequacy” and the solicitation’s use of the broader term “resource analysis” which, in ARI’s view, encompasses “resource adequacy.” ARI also contends that the fallacy of TETRA’s position is evidenced by the fact that TETRA has hired a support contractor pending reissuance of the solicitation; ARI alleges that the contractor is performing the tasks identified under the cancelled solicitation. Given that TETRA, not ARI, is in the best position to identify its requirements, and in light of the deference afforded agencies in identifying their needs, Safety Storage, Inc., B-280851.2, May 13, 1999, 99-1 CPD ¶ 93 at 2, we view ARI’s reliance on the agency’s use of the term “adequacy,” coupled with its own beliefs regarding the nature of the agency’s requirements, to be an inadequate basis for our Office to question the agency’s representations regarding its changed needs. Moreover, we do not find the activities performed by TETRA’s temporary support contractor, while TETRA redrafts its requirements, to be relevant indicia of whether TETRA’s needs have changed since the issuance of the original solicitation in December 2007, given that TETRA is still in the process of crafting a new solicitation to reflect its changed requirements.

Assuming that TETRA’s mission has in fact changed, ARI alternatively argues that the cancelled solicitation could have been used to meet the agency’s changed requirements since the solicitation required flexibility by the contractor, generally informing offerors that “[i]n a constantly changing environment, TETRA requires flexible support, agile and capable performance, and aggressive pursuit of satisfying new requirements.” RFP at 5. ARI’s reliance on general undefined statements regarding contractor flexibility in the RFP misses the point—TETRA was not required to make award under a solicitation which it maintains was fundamentally inconsistent with its needs and on the possibility that broad statements in the RFP would be sufficient for the agency to satisfy its changed needs.

As a final matter, ARI maintains that the Army could have readily awarded ARI task orders for those mission area functions requiring support until TETRA completes its reassessment and issues the new solicitation. According to ARI, the agency has instead unreasonably decided to have its support services needs met using government personnel and a task order issued under a separate ID/IQ contract. In this regard, ARI asserts that award under the solicitation would have been a “less expensive approach.” ARI’s Comments, July 24, 2009, at 2. ARI’s assertion regarding cost, however, is unpersuasive; it is based entirely on ARI’s own comparison of the cost of the support contractor and ARI’s cost for performance as the incumbent contractor, not ARI’s proposed cost under the cancelled solicitation. We therefore have no basis to conclude that the agency acted unreasonably in deciding to cancel the solicitation.

The protest is denied.

Daniel I. Gordon
Acting General Counsel