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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Quality Technology, Inc.

File: B-292883.2

Date: January 21, 2004

William M. Rosen, Esq., William M. Rosen Law Office, and Charlotte Rothenberg Rosen, Esq., Dickstein, Shapiro, Morin & Oshinsky, for the protester.

Richard E. Hurst, Esq., Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of request for quotations was reasonable where quotations received were substantially higher than agency's available funding for requirement, and where agency decided to reassess its needs prior to resolicitation in light of canceled solicitation's apparent overstatement of requirements.

DECISION

Quality Technology, Inc. protests the cancellation of request for quotations (RFQ) No. 030110, issued by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), for Enterprise Architecture Document (EAD) support services. The EAD defines the enterprise architecture required to ensure efficient use of information technology resources to meet the agency's mission and goals; the RFQ provides for the upgrade and update of the EAD. Quality, the incumbent contractor, contends that the cancellation lacks a reasonable basis and is only a pretext by the agency to avoid our Office's review of an earlier protest Quality filed challenging the agency's failure to solicit its quotation under the RFQ.

We deny the protest.

The agency issued the RFQ on September 3, 2003, to four Federal Supply Schedule vendors, but not to Quality. Although Quality obtained a copy of the solicitation from another vendor, it did not submit a quotation. On September 22, Quality filed a protest with our Office contending that the agency's failure to solicit its quotation

was a de facto debarment of the firm.¹ The protester alleged that agency personnel told Quality that it was not solicited because the agency decided “to move in a different direction,” which Quality considered to be a de facto debarment of the firm. Protest at 3.

The record shows that shortly after the RFQ was issued, and prior to the filing of Quality’s initial protest, the contracting officer’s technical representative (COTR) (by e-mail communication of September 9) raised concerns to other contracting personnel about the adequacy of available funding for the work required under the RFQ. Specifically, she recognized that funding for the RFQ’s services was available in the amount of \$[deleted]; these funds were for [deleted] support personnel at a total of [deleted] labor hours.² The RFQ, on the other hand, required five support personnel at a total of 8,820 labor hours. The three quotations received ranged from \$[deleted] to \$[deleted]. Finding that some RFQ requirements may be duplicative, and that efficiency and economy would be better achieved by ordering some of the work under other agency contracts for particular types of work, the agency determined that cancellation was warranted. The effective date of the cancellation (September 24) was 2 days after Quality had filed its earlier protest of the agency’s failure to request a quotation from Quality.

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ. DataTrak Consulting, Inc., B-292502 et al., Sept. 26, 2003, 2003 CPD ¶ 169 at 5; Surgi-Textile, B-289370, Feb. 7, 2002, 2002 CPD ¶ 38 at 2. It is well established that lack of funding for a procurement provides a reasonable basis for cancellation, James M. Carroll-Recon., B-221502.3, Mar. 24, 1986, 86-1 CPD ¶ 290 at 3; cancellation is also warranted where a solicitation fails to reflect an agency’s actual requirements and reassessment of agency needs results in an agency no longer having a requirement included in that solicitation. See USA Elecs., B-283269.2, Oct. 5, 1999, 99-2 CPD ¶ 67 at 3. 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 quotations have been submitted and evaluated. Id. Our review of the record here provides no basis for us

¹ In light of the agency’s subsequent cancellation of the RFQ, our Office dismissed Quality’s initial protest, since cancellation of a solicitation renders a protest academic. See Dyna-Air Eng’g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132. During that protest and the current protest, the agency has continued to assert that it will promptly notify Quality of any resolicitation of the canceled acquisition and invite its participation in that and future procurements, if it is otherwise eligible.

² The agency reports that \$[deleted] (the amount shown on an ATF requisition form) was allocated for ATF’s EAD needs, and that the \$[deleted] funding total includes \$[deleted] for EAD support services for the Tax and Trade Bureau, formerly associated with ATF.

to question the reasonableness of the agency's cancellation of the RFQ. ATF has adequately demonstrated that the cancellation reasonably resulted from funding limitations and a subsequently discovered overstatement of its actual needs.

The protester contends that a lack of documentation in the record supports its belief that the agency fabricated its basis for cancellation in order to avoid review of Quality's initial protest of alleged de facto debarment. We agree with Quality that the agency's supporting documentation in the record is minimal, and that most of the narrative explaining the agency's concerns may have been prepared for use in the agency's report in response to this protest, as much of the documentation is undated. Our review of the record, however, shows that there is sufficient contemporaneous documentation (namely, funding documentation and e-mail communications) to support the reasonableness of the agency's cancellation.

As a preliminary matter, the record shows, and the protester acknowledges, that the agency has produced a funding document from the agency's infrastructure budget documentation for the EAD services, indicating that a total of \$[deleted] was available for the services called for under the RFQ. Given that the quotations received in response to the RFQ greatly exceeded the amount of funding available, the agency clearly had a reasonable basis to cancel the RFQ. James M. Carroll--Recon., supra.

Further, as stated above, as early as September 9, almost 2 weeks before the protester filed its initial protest, the COTR sent an e-mail communication to contracting personnel raising a concern that there would not be adequate funding for the RFQ's requirements. Specifically, she pointed out that \$[deleted] had been made available for the services of [deleted] workers for a total of [deleted] hours; she discovered, however, that the RFQ instead required five workers, representing almost 9,000 hours of work. In response, one contracting staff member, in an e-mail communication of September 11, asked if vendors could instead partially staff the project in order to be within available funding amounts, suggesting that much less than the work requirement reflected in the RFQ would be acceptable to the agency. While Quality suggests that this response e-mail supports its argument against cancellation, we believe it fully supports the reasonableness of that action as it indicates that many of the personnel and hours included in the RFQ may not be needed to satisfy the agency's actual performance requirements.

In short, the lack of funding for the RFQ's requirements clearly supports the reasonableness of the cancellation. Moreover, as the agency points out, the record indicates that the agency's actual requirements, currently under agency review, were not accurately defined in the RFQ, and may have been overstated, as much of the work may more reasonably be procured under other agency contracts to reduce repetitive effort and to benefit from volume discount pricing.

The protester's mere disagreement with the agency's otherwise reasonable bases for cancellation provides no basis to question the propriety of that cancellation. Nor is there any evidence in the record supporting the protester's contention that the proffered rationale for cancellation is merely a pretext by the agency to avoid review of its earlier protest. We will not attribute bias to an agency on the basis of inference and supposition and, without strong evidence to support such a conclusion, we will not find that agency employees acted in bad faith. DataTrak Consulting, Inc., supra; Chenega Mgmt., LLC, B-290598, Aug. 8, 2002, 2002 CPD ¶ 143 at 4.

The protest is denied.

Anthony H. Gamboa
General Counsel