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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Glen/Mar Construction, Inc.

File: B-298355

Date: August 3, 2006

Mary E. Brown for the protester.

Phillipa L. Anderson, Esq., Karen A. Nappo, Esq., and Charlma J. Quarles, Esq.,
Department of Veterans Affairs, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Cancellation of request for proposals for construction project was reasonable where
proposals received were substantially higher than agency's available funding.

DECISION

Glen/Mar Construction, Inc. protests the cancellation of request for proposals (RFP) No. 260-06-01648, issued by the Department of Veterans Affairs (VA) to provide construction services at the VA Medical Center in Portland, Oregon. Glen/Mar contends that the agency lacked a reasonable basis for the cancellation and also challenges the agency's stated intention to consider issuing the resolicited project on an unrestricted basis.

We deny the protest.

On March 29, 2006, the VA issued the RFP as a service-disabled veteran-owned small business (SDVOSB) set-aside for construction services at the specified VA building. Offerors were requested to propose fixed prices for a base line item and for two alternate line items, each of which reflected deletions from the required work. Offerors were informed that a single award would be made on the base line item, but in the event "funding does not allow selection of [the base line item]," the agency reserved the right to "reduce the scope of work for any resultant contract by selection of one of the alternate [line items]." RFP at 5.

Two proposals, including Glen/Mar's, were received by the solicitation's May 11 extended closing date. The contracting officer reviewed the proposals and

concluded that each proposal significantly exceeded the available funding for this project even if the deductive alternate line items were exercised. After confirming that no additional funds were available to support an award selection, the contracting officer canceled the solicitation. This protest followed.

Glen/Mar argues that the agency's decision to cancel the solicitation lacks a reasonable basis. The protester questions the timing of the agency's decision to cancel, alleging that the contracting officer should have "attempted negotiations" which "would have confirmed the Contracting Officer[s] speculation and would have provided merit to his immediate cancellation of this solicitation." Protester's Comments at 2.

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFP. In this regard, 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. Quality Support, Inc., B-296716, Sept. 13, 2005, 2005 CPD ¶ 172 at 2. It is well established that an agency's lack of funding for a procurement provides a reasonable basis for cancellation, as agencies may not award contracts that exceed available funds. First Enter., B-292967, Jan. 7, 2004, 2004 CPD ¶ 11 at 3-4; James M. Carroll-Recon., B-221502.3, Mar. 24, 1986, 86-1 CPD ¶ 290 at 3. Here, the agency reports that both proposals exceeded the available funding for this project, and the agency has submitted documents showing that additional funds were not available. Under these circumstances, we have no basis to object to the cancellation.

Although Glen/Mar contends that negotiations "would have and could have resolved any budget constraints," Protest at 3, the protester's belief that negotiations might have resulted in reducing the offerors' proposed pricing does not render unreasonable the contracting officer's decision to cancel the solicitation. In any event, there was a significant difference between the pricing proposed and the available funding, which made it unlikely that negotiations, without a significant reduction in the scope of the contract requirements, would have proved successful.

In the absence of a showing of bad faith on an agency's part in connection with a funding decision (which is neither alleged nor otherwise evident here), there is no basis to require an agency to go forward with a procurement given that there is insufficient funding for the project. James M. Carroll-Recon., *supra*. Procurement officials are presumed to act in good faith and in order for our Office to conclude otherwise, the record must show that procuring officials intended to injure the protester. Cycad Corp., B-255870, Apr. 12, 1994, 94-1 CPD ¶ 253 at 5. Since the required showing has not been made, we have no basis to question the agency's decision to cancel the RFP because of insufficient funding.

Finally, regarding the protester's objection to the agency's stated intention to consider resoliciting the project on an unrestricted basis, rather than as an SDVOSB set-aside, the matter is premature at this time. Our Office considers protests against

specific procurement actions and not allegations of anticipated future improprieties.
See Ystueta, Inc., B-296628.4, Feb. 27, 2006, 2006 CPD ¶ 46 at 2-3.

The protest is denied.

Gary L. Kepplinger
General Counsel