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**Comptroller General
of the United States**

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

Decision

Matter of: SKJ & Associates, Inc.

File: B-294219

Date: August 13, 2004

Joseph M. Jankite for the protester.
David G. Hester, Esq., U.S. Trade and Development Agency, 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

Contracting agency had a reasonable basis for canceling request for quotations for analysis, grant, and audit services where the agency decided to perform the services in-house and therefore no longer had a need for a contractor to perform the services called for under the solicitation.

DECISION

SKJ & Associates, Inc. protests the cancellation of request for quotations (RFQ) No. USTDA-04-Q-0-171, issued by the U.S. Trade and Development Agency (USTDA) for analysis, grant, and audit services in connection with the USTDA's grant administration program. SKJ principally argues that the agency abused its discretion and violated the requirements of Office of Management and Budget (OMB) Circular A-76 when it canceled the RFQ.

We deny the protest.

On May 3, 2004, the USTDA issued the RFQ as a small business set-aside under the provisions set forth in Federal Acquisition Regulation subpart 12.6 for acquisition of commercial items. The RFQ contemplated the award of a contract for analysis, grant, and audit services in connection with the USTDA's grant administration program. Specifically, the services under the RFQ involve the agency's "success fee program," and its related audit program and procedures for the deobligation of grant

funds.¹ According to the agency, a single USTDA employee has performed the grant administration activities for the last several years, but, because the volume of grant administration work has recently increased, the agency issued the subject solicitation in order to obtain additional support from a contractor. Contracting Officer's (CO) Statement at 2. The RFQ estimated that the agency would require approximately 1,050 hours of services over a period of approximately 6 months. SKJ timely submitted a quotation in response to the RFQ by the May 25 closing date. The agency, however, canceled the solicitation in a letter dated June 10 because it had decided to divide the RFQ's requirements among USTDA employees and, as a consequence, it no longer had a requirement for a contractor to perform the analysis, grant, and audit services called for under the RFQ. According to the agency, this decision was made pursuant to what the agency characterized as an agency-wide reorganization plan, which included reallocating work among the USTDA's employees. CO Statement at 3-4.

Asserting contract avoidance, promissory estoppel, and quantum meruit, the protester essentially argues that the agency's decision to cancel the RFQ was arbitrary and capricious.² A contracting agency need only establish a reasonable

¹ As explained by the USTDA, in carrying out its mission to promote participation by the U.S. private sector in development projects for developing and middle-income countries, the USTDA awards and administers grants to private sector firms. In certain circumstances, when a U.S. firm has been funded by a USTDA grant it is required to pay a "success fee" to USTDA. Firms that participate in the success fee program are required to provide information concerning whether a success fee obligation has been incurred as well as the amount of the fee. USTDA also obtains audits of matters funded by USTDA grants and must in various instances terminate its funding obligations in connection with the grants and de-obligate the remaining funds. Contracting Officer's (CO) Statement at 1.

² The various theories cited by the protester are not applicable to the issues raised in this case since they concern matters of contract administration and extra-contractual theories of recovery. Contract avoidance is generally understood as a defense to contract enforcement whereby a party seeks to exercise its power to avoid a contract that is void or voidable because of fraud, duress, mistake, or incapacity in the inducement of the contract. Restatement (Second) of Contracts § 7 (1981). A claim for promissory estoppel is founded on a contract implied-in-law (a quasi-contract) where a duty is imposed by operation of law without regard to the intent of the parties. See Pacific Gas & Elec. Co. v. United States, 3 Cl. Ct. 329, 340 (1983). Similarly, quantum meruit provides an equitable remedy where a party seeks to recover the value of a benefit it provided to another party even though there was no contract in effect. See JANA, Inc., B-247889.2, Aug. 11, 1992, 92-2 CPD ¶ 94 at 5 n.2. We note that there is no evidence that the protester provided any benefit to the government that would entitle it to recovery of costs even under this theory.

basis to support a decision to cancel an RFQ. DataTrak Consulting, Inc., B-292502 et al., Sept. 26, 2003, 2003 CPD ¶ 169 at 5. So long as there is a reasonable basis, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until offers (or, as here, quotations) have been submitted and evaluated. Id. In this case, the USTDA indicates that it canceled the RFQ because it decided to perform the analysis, grant, and audit services in-house and, as a result, there was no longer a need for a contractor to perform the services. Our review of the record provides no basis for us to question the reasonableness of the agency's decision in this regard. Id. (denying protest of solicitation cancellation where the agency indicated that the services were no longer needed because they would be performed in-house).

The protester also argues that the agency's cancellation of the solicitation in favor of performing the work in-house was improper because OMB Circular A-76 requires that the agency contract with the private sector for these requirements. OMB Circular A-76 describes the executive branch's policy on the operation of commercial activities that are incidental to the performance of government functions and outlines procedures for determining whether commercial activities should be operated under contract by private enterprise or in-house using government facilities and personnel. Generally, we do not review such issues because they involve matters of executive branch policy. Daniels Mfg. Corp., B-253637, June 7, 1993, 93-1 CPD ¶ 439 at 1. We will, however, consider protests concerning OMB Circular A-76 when it is alleged that an agency did not adhere to the rules announced in a solicitation issued for the purpose of comparing the cost of contracting out work with the cost of performing work in-house. Id. Because the subject solicitation was not issued for such a purpose, the matter is not one that we review.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ The protester also argues that the agency acted in bad faith when it decided to cancel the RFQ. The protester has not presented any evidence, and we see none in the record, in support of this assertion. See McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 28 (holding that prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition).