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**Comptroller General
of the United States**

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

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The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: Logistics Solutions Group, Inc.

File: B-294604.7, B-294604.8

Date: July 28, 2005

Robert E. Korroch, Esq., and Francis E. Purcell, Jr., Esq., Williams Mullen, for the protester.

Capt. Peter G. Hartman, and Capt. Geraldine Chanel, Department of the Army, 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

Contracting agency's decision to cancel solicitation and resolicit requirement was reasonable where the original solicitation no longer represented the agency's actual needs.

DECISION

Logistics Solutions Group, Inc. protests the decision by the Department of the Army to cancel request for proposals (RFP) No. W912D1-04-R-0019, which sought proposals to provide Standard Army Management Information Systems (STAMIS) training, and Combat Service Support Automation Management Office (CSSAMO) support services.¹

We deny the protests in part and dismiss them in part.

The requiring activity, the Coalition Forces Land Component Command (CFLCC), is responsible for providing logistical support for Army forces deployed in Operation Iraqi, Enduring Freedom, and the Horn of Africa. To fulfill these missions, the

¹ The STAMIS is a family of automated logistical, maintenance and assistance systems. The CSSAMO provides support for the Army's STAMIS systems, including software, functional, technical, communications, and limited hardware. The CSSAMO also provides training evaluation of unit personnel and staff assistance on the use and implementation of STAMIS to the command. RFP at 7.

requiring activity requires training and support services to accommodate temporary changes in the force structure. The then-existing contract for these services expired on February 29, 2004, but was extended for a total of 6 months to permit the solicitation and award of a follow-on contract.

The follow-on RFP was issued on March 21, and as amended, it contemplated the award of a fixed-price contract for a base year with 3 option years. Award was to be made to the offeror with the lowest-priced, technically acceptable proposal, with proposals evaluated on the basis of several technical factors, past performance, and price. RFP at 35-36. Several proposals were received and evaluated by the agency. The agency determined that the proposal submitted by The Logistics Company (TLC) was the lowest-priced technically acceptable proposal and made award to that firm on August 19. By letters dated August 22, the agency notified the unsuccessful offerors of the award.

On August 27, an unsuccessful offeror, Integration Technologies Group, Inc., filed an initial protest in our Office (B-294604) objecting to the award to TLC. On October 7, Logistics also protested the same award, which we dismissed as untimely (B-294604.4). Thereafter, by letter dated October 21, the agency advised our Office that it intended to take corrective action in response to Integration Technologies' protest, as supplemented. Specifically, the agency decided to reevaluate all initial proposals, establish a competitive range, conduct discussions, request and evaluate final revised proposals, and make a new selection decision. Accordingly, on October 22, we dismissed Integration Technologies' protests as academic (B-294604; B-294604.2; B-294604.3; B-294604.5).

Between the time Integration Technologies' initial protest was filed and the agency's decision to take corrective action, the contracting officer issued a sole-source bridge contract to TLC on August 31, 2004--the only contractor who had provided these services in theater--because of the requiring activity's on-going need for these support services. Contracting Officer's Statement of Fact at 1.

On March 15, 2005, the requiring activity, notified the contracting officer that its needs had changed. Specifically, the contracting officer was advised:

I would like to request that [the contracting officer] change the scope of the solicitation for the CSSAMO contract. I don't believe the existing statement of work is valid as we move forward. It has been over a year since the last solicitation was executed, and in that time the requirements of the civilian CSSAMO have broadened based on what we need in theater. As we reduce the military footprint in theater, the civilian CCSAMO will have to assume more of the responsibilities for customer unit support. Additionally, the technical criteria with which the responses to the previous solicitation were evaluated have changed and require that the contractor have an enhanced skill set. We need to

change the criteria we use to evaluate responses to focus on technical capabilities versus meeting a list of administrative documents submitted in response to the solicitation.

Agency Report (AR) (B-294604.7), exh. 6, CFLCC's E-mail (Mar. 15, 2005). As a result of that request, the contracting officer decided to cancel the solicitation and issue a revised solicitation that reflected the requiring activity's current minimum needs. As she explained in her e-mail to the protester:

Review of the solicitation W912D1-04-R-0019 reveals that the statement of work (SOW) as stated no longer represents the needs of the CSSAMO/STAMIS mission in theatre. Solicitation W912D1-04-R-0019 will not be awarded. The solicitation will be cancelled and replaced with a new solicitation, containing a SOW that represents the needs of CSSAMO/STAMIS in theatre.

Protest (B-294604.8), exh. 2, Contracting Officer's E-mail (Apr. 10, 2005). On April 25, the Army issued revised solicitation No. W912D1-05-R-0020, and this protest followed.

Logistics argues that the agency's decision to cancel the original solicitation lacks a reasonable basis. The protester contends that "the new solicitation's SOW is virtually the same as that of the original solicitation." Protest at 4. In a negotiated procurement such as this one, the contracting officer has broad authority to decide whether to cancel a solicitation and need only establish a reasonable basis for doing so. USA Elecs., B-283269.2, Oct. 5, 1999, 99-2 CPD ¶ 67 at 3. 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, such that cancellation of the solicitation and issuance of a revised solicitation is appropriate. 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. Our review of the record here provides no basis for us to question the reasonableness of the agency's cancellation.

The record shows that the original solicitation's requirements fail to reflect the requiring activity's current, actual needs and the record delineates at least four areas of the original SOW that were revised. Each of these changes affects material specifications that were more accurately defined to better reflect the agency's actual needs, which, in our view, warrant the agency's cancellation of the original solicitation. The protester's argument that the revised solicitation is for the same effort and scope of work as the original solicitation is simply incorrect.

For instance, the number of STAMIS systems to be supported by the successful contractor was increased in the revised solicitation to include (1) Property Book and Unit Supply--Enhanced, (2) C4 Very Small Aperture Terminal Satellite Communications System, (3) Combat Service Support Very Small Aperture Terminal

Satellite Communications System, and (4) Combat Service Support Automated Information System Interface. The record also shows that the original SOW was revised to include major levels of effort, namely, (1) Contract level management, (2) STAMIS maintenance services, (3) STAMIS management services, (4) STAMIS support services, and (5) STAMIS training services. In addition, as the Army points out, the basis for award was changed from lowest-priced, technically acceptable to comparatively evaluate technical proposals and price. The Army further reports that of the four proposals it received in response to the revised solicitation, one was from a new offeror.

Since it is apparent from the record that the agency's requirements have changed substantially from those solicited, we find the Army's decision to cancel and resolicit was reasonable. 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 manipulate the procurement process because, as part of the October 21, 2004 corrective action, the agency had agreed to reevaluate proposals. Government officials are presumed to act in good faith and, where a protester contends that contracting officials are motivated by bad faith, it must provide convincing proof, since our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference and suppositions. American Artisan Prods., Inc., B-292559, B-292559.2, Oct. 7, 2003, 2003 CPD ¶ 176 at 9; Chenega Mgmt., LLC, B-290598, Aug. 8, 2002, 2002 CPD ¶ 143 at 4. Here, other than innuendo, Logistics has provided no support for its bad faith allegation. In any event, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises. DataTrak Consulting, Inc., B-292502 et al., supra, at 5.

To the extent Logistics argues that the Army should have amended rather than cancel the original solicitation, this argument is without merit. See Protester's Comments at 4-5. Federal Acquisition Regulation § 15.206(e) requires the contracting officer to cancel the original solicitation and issue a new one, if an amendment would be "so substantial as to exceed what prospective offerors reasonably could have anticipated." On the basis of the record before us, we think the changes in the agency's current minimum needs fall within this provision. See VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111.

Finally, on April 21, 2005, Logistics filed an agency-level protest challenging the noncompetitive award to TLC, made on August 31, 2004, which protest allegedly was based upon information obtained from the contracting officer on April 11, 2005. By letter of May 9, the agency dismissed the protest as untimely finding that the protester knew or should have known prior to April 11 of the bridge contract and of TLC's performance under this contract. This protest to our Office followed. The Army requests that we dismiss Logistics protest because its agency-level protest was untimely filed.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2005). Further, our Regulations provide that a matter initially protested to the contracting agency will be considered only if the initial protest was filed within the time limits for filing a protest with our Office, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. *Id.* § 21.2(a)(3).

As stated in its agency-level protest, the protester's allegation was based upon information first learned from the contracting officer on April 11, 2005. According to the protester, on April 11, 2005 it sent an e-mail to the contracting officer in which the firm stated:

It is our understanding that the CSSAMO service that was initially awarded under this solicitation, and subsequently protested, has been continuously provided by the awarded contractor. [Logistics] understands that these services may be being procured through extensions, purchase orders, or other means of procurement. [Logistics] would like the opportunity to provide the required support...

Protest (B-294604.8), exh. 3, Protester's E-mail to Contracting Officer (Apr. 11, 2005).

The protester states that the contracting officer's April 11 e-mail response to this inquiry formed the basis for protest. Protest (B-294604.8) at 3-4. However, given the substantial passage of time since the sole-source bridge contract was awarded, we conclude that Logistics's agency-level protest was untimely; therefore, its subsequent protest to our Office will not be considered. A protester is required to diligently pursue all information that may give rise to a protest issue. Here, as quoted above, Logistics was aware that the CSSAMO services were being provided, yet the protester waited approximately 7 months before it requested and received information from the contracting officer concerning the performance of these services. Since it is not apparent from the record (Logistics does not explain) why the protester could not have discovered the basis for TLC's performance of the CSSAMO services prior to April 11, this delay simply does not meet our requirements for the expeditious pursuit of information and this protest is dismissed. See Professional Rehab. Consultants, Inc., B-275871, Feb. 28, 1997, 97-1 CPD ¶ 94 at 2-3; cf., VSE Corp.; Johnson Controls World Servs., Inc., B-290452.3 et al., May 23, 2005, 2005 CPD ¶ 103.

The protests are denied in part and dismissed in part.

Anthony H. Gamboa
General Counsel