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**Comptroller General
of the United States**

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

Decision

Matter of: Quality Support, Inc.

File: B-296716

Date: September 13, 2005

Joseph G. Billings, Esq., for the protester.
Phillipa L. Anderson, Esq., Dennis Foley, Esq., and Philip Kauffman, Esq.,
Department of Veterans Affairs, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's cancellation of solicitation after receipt and evaluation of quotations is denied where record supports reasonableness of cancellation due to lack of available funding.

DECISION

Quality Support, Inc. protests the decision of the Department of Veterans Affairs (VA) to cancel a request for quotations (RFQ) for conference planning and support services for the Center for Quality Management, a field office of the VA Public Health Strategic Health Care Group. The protester contends that the cancellation lacks a reasonable basis and is only a pretext by the agency to avoid issuance of a purchase order to the protester.

We deny the protest.

On May 24, 2005, the VA Medical Center AIDS Service Office sent the contracting officer a request for conference planning services for a 2-year period. This request included information that indicated the availability of funding for this requirement. Agency Report (AR), VA Form 2237. The contracting officer identified three service-disabled-veteran-owned small business (SDVOSB) firms, including the protester, as potential sources under the Federal Supply Schedule (FSS) for the requirement. The RFQ subsequently was issued to four FSS vendors, including the incumbent, Courtesy Associates, a non-SDVOSB. The RFQ contained a statement of work that provided a description of the required tasks and required vendors to address these tasks in their quotations. The RFQ required specialized conference and logistical

management services accommodating 10 to 150 participants in support of the Center for Quality Management's goals and strategic planning for the treatment and management of HIV infection, hepatitis C, smoking cessation, and other public health issues. The RFQ also listed and described 16 conferences for a 2-year period. The list was identified as an estimate and noted that the conference dates were subject to change.

The agency received two quotations, from the protester and Courtesy, in response to the RFQ. The evaluators rated Courtesy's quotation higher technically because Courtesy demonstrated a better understanding of, and greater experience with, the technical elements of the requirement. The evaluators expressed some reservation about selecting Quality because Quality had "only 15 years of experience," no prior working history with the VA, and no smoking or hepatitis C conference background. AR, Tab 6, BPA Scoring. The contracting officer nevertheless made a preliminary decision to award to Quality based on its lower price. However, subsequently, the program office informed the contracting officer of the office's intent to "pull the funding document back that they had provided in support of this action." Contracting Officer's Statement at 1. The program office further advised the contracting officer that the office had "made a mistake in sending me the funding document . . . in the first place." *Id.* at 2. The contracting officer subsequently received a VA funding document from the program office canceling the procurement request. VA Form 2237. Based on this information from the program office, the contracting officer canceled the RFQ because the agency lacked funding for the requirement.

Quality protests the cancellation of the RFQ and maintains that the agency's decision to cancel was unreasonable. A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ; in this regard, so long as there is a reasonable basis for doing so, an agency may cancel an RFQ no matter when the information precipitating the cancellation first arises, even if it is not until quotations have been submitted and evaluated. Quality Tech., Inc., B-292883.2, Jan. 21, 2004, 2004 CPD ¶ 29 at 2-3; DataTrak Consulting, Inc., B-292502 *et al.*, Sept. 26, 2003, 2003 CPD ¶ 169 at 5.

While the agency has asserted several reasons for canceling the RFQ, it is well established that an agency's lack of funding for a procurement provides a reasonable basis for cancellation, as agencies cannot award contracts which exceed available funds. First Enter., B-221502.3, Mar. 24, 1986, 86-1 CPD ¶ 290 at 3. While the VA concedes that the procurement was flawed and that there was a misunderstanding between the contracting officer and the program office as to this procurement, as discussed above, the record shows that there are no funds available for this requirement. Moreover, the contracting officer reports that, based on his discussions with the program office, it is not clear that the VA had any definite requirements for conferences at the time it issued the RFQ. The contracting officer states that he has again discussed this matter with the program office and the program office has confirmed that, in addition to a lack of funding, there is no

current requirement for the conference planning and support services solicited under the RFQ. Supplemental Agency Report at 6. While we do not condone the program office's apparently erroneous decision to prepare a procurement request that led to the issuance of this RFQ, nonetheless, the record does support the contracting officer's decision to cancel the RFQ.

In addition, while the protester argues that the cancellation is a subterfuge to avoid awarding it a contract, there is no evidence in the record to support this allegation. In fact, as Quality has acknowledged, the record shows that the agency was contemplating the issuance of purchase orders to both it and Courtesy. Protester's Supplemental Comments at 5. Procurement authorities 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. As there is no evidence of such an intent here, the protester's mere inference of bad faith is insufficient.

The protest is denied.

Anthony H. Gamboa
General Counsel