



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

Decision

Matter of: Management Solutions, L.C. d/b/a EssTech Engineering

File: B-298883; B-298883.2

Date: December 13, 2006

Donald A. Stadtler for the protester.
Brian E. Toland, Esq., U.S. Army Materiel Command, 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

Cancellation of request for proposals (RFP) was reasonable where, after issuance of the RFP, the agency determined that it was required to satisfy its requirement from Federal Prison Industries under Federal Acquisition Regulation § 8.602.

DECISION

Management Solutions, L.C. d/b/a EssTech Engineering protests the cancellation of request for proposals (RFP) No. W52H09-06-R-0314, issued by the Department of the Army, U.S. Army Materiel Command, for 809 indicator control subassemblies. Management Solutions argues that the agency did not have a reasonable basis for canceling the solicitation and also challenges the agency's concurrent decision to obtain the requirement from Federal Prison Industries, Inc. (FPI), arguing that the RFP instead should have been set aside for Historically Underutilized Business Zone (HUBZone) small businesses.

We deny the protest.

On May 11, 2006, the Army issued the RFP as a small business set-aside, with a closing date of June 13. Prior to the closing date, Management Solutions sent the contracting officer several e-mail messages requesting that the solicitation be set aside for HUBZone small businesses. As a consequence of those requests, the contracting officer amended the RFP's closing date and issued a sources sought

notice, in order to determine whether a HUBZone set-aside was appropriate.¹ On August 7, however, the Army received a submission from FPI which provided FPI's price and delivery terms for the requirement. Upon receipt of that submission, the contracting officer realized that the agency had not conducted market research to determine whether the product offered by FPI was comparable to products available from the private sector, as contemplated by Federal Acquisition Regulation (FAR) § 8.602. In an effort to determine how FPI's price and delivery terms compared to those of commercial vendors, the contracting officer sent survey questionnaires to the firms that had, to date, responded to the RFP. In the surveys, the contracting officer sought, among other things, information regarding the firms' price, quality, and delivery schedule for the items. Twelve firms responded to the surveys. Based on the survey results, the contracting officer concluded that FPI's price, quality, and delivery terms were comparable to the commercial vendors'; as a result, the contracting officer canceled the RFP on September 21 in order to place the requirement with FPI.² Agency Report, Tab L, Memorandum for Record. This protest followed.

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. Glen/Mar Constr., Inc., B-298355, Aug. 3, 2006, 2006 CPD ¶ 117 at 2. Here, given that, as explained below, the agency was required to purchase the indicator control subassemblies from FPI, the agency acted reasonably in canceling the RFP.

Agencies are required to purchase supplies manufactured by FPI where, after conducting market research, the agency determines that supplies produced by FPI are comparable to those of the private sector in terms of price, quality, and time of delivery. FAR § 8.602(a)(1), (3). While the record reflects that the agency did not consider FPI as a source for the indicator control subassemblies prior to issuance of the RFP, and thus did not conduct market research in advance of the RFP, upon realizing that FPI was a potential source for the indicator control subassemblies, the contracting officer properly took steps required by the FAR to determine whether FPI's item was comparable to that of the private sector in terms of price, quality, and time of delivery. Upon concluding that they were comparable, the contracting officer was required to purchase the subassemblies from FPI and cancel the RFP.

¹ The contracting officer extended the RFP closing date numerous times, ultimately extending the due date for proposals to September 22.

² In fact, the contracting officer found that as compared to the 12 responding firms, FPI's price was lower; as the incumbent supplier, FPI's quality was proven; and FPI's delivery schedule was more advantageous.

To the extent the protester argues that the RFP should have been issued as a HUBZone set-aside, the argument is without merit. FAR § 8.602(a)(3) specifically provides that where an FPI item is determined to be comparable, the agency “shall . . . purchase the item from FPI.” An agency may only acquire an item produced by FPI using “competitive procedures,” including the HUBZone set-aside procedures set forth under FAR Subpart 19.13, where the agency determines that the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery. FAR § 8.602(a)(4); FAR § 19.1304(a)(1) (stating that the HUBZone provisions do not apply to requirements that can be satisfied through award to FPI). Since the contracting officer’s market research indicated that FPI’s subassemblies were comparable in all respects, setting aside the requirement for HUBZone small business concerns was not an option for procuring the items.

The protest is denied.

Gary L. Kepplinger
General Counsel