



Decision

Matter of: VetPride Services, Inc.

File: B-401435

Date: July 28, 2009

Wes Pierce for the protester.

Capt. Megan E. Stephens, and Raymond M. Saunders, Esq., Department of the Army, for the agency.

Bryn Mayes, and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably cancelled solicitation for work reception and management services where the record establishes lack of funding.

DECISION

VetPride Services, Inc. of Fayetteville, North Carolina, protests the cancellation of request for proposals (RFP) No. W9124E-09-R-0001, issued by the Department of the Army (Army) for work reception and management services for the Directorate of Public Works (DPW) at Fort Polk, Louisiana.

We deny the protest.

The RFP, issued as a service-disabled veteran-owned small business set-aside, provided for the award of a fixed-price contract for work reception and management services at Fort Polk for a base year with 4 option years.¹ RFP at 3. Proposals were received from a number of offerors, including VetPride, and all of the proposals were

¹ Previously, the Army obtained work reception and management services from a base operations contractor under a cost-reimbursement contract. Because the agency had some problems with the performance of these services by the base operations contractor, the Army decided to obtain the services under a separate fixed-price contract. Contracting Officer's Statement at 1. The purchase request for these services and the RFP were issued contingent upon obtaining available funds. Id.

found to be in the competitive range. Discussions were conducted, and revised proposals were received. Contracting Officer's Statement at 2-3.

Following the receipt of revised proposals, DPW requested verification of available funding to make the award, see Agency Report (AR), Tab 9, DPW Email to Budget Office, May 5, 2009, and was informed that there was not sufficient funding to make the award. Contracting Officer's Statement at 3-4. Subsequently, DPW's request for approval to award this services contract was disapproved. AR, Tab 8, Request for Services Contract Approval, May 15, 2009, at 1. The RFP was cancelled, and offerors were notified "that the solicitation has been cancelled in its entirety due to change in the Government's requirements." AR, Tab 12, Contracting Officer's Letter to VetPride, May 27, 2009. This protest followed.

VetPride complains that the Army cancelled the solicitation after 5 months of negotiations and contends that the agency acted unreasonably in "stringing along all the contractors who were found to be in a competitive range." Comments at 1. VetPride disputes that the Army does not have sufficient funds to procure these services. The protester argues that the record establishes that the agency has a continuing need for these services, given the agency's use of federal employees for work reception and management services. Id. at 2.

In a negotiated procurement such as this one, the contracting agency has broad discretion in deciding whether to cancel a solicitation and need only have a reasonable basis for doing so. A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2. If a reasonable basis exists to cancel a solicitation, an agency may cancel the solicitation regardless of when the information first surfaces or should have been known, even if the solicitation is not cancelled until after proposals have been submitted and evaluated. See SEI Group, Inc., B-299108, Feb. 6, 2007 CPD ¶ 35 at 3; VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6; Daston Corp., B-292583, B-292583.2, Oct. 20, 2003 CPD ¶ 193 at 3. An agency's lack of funding for a procurement is a reasonable basis for cancellation, as agencies may not award contracts that exceed available funds. Quality Support, Inc., B-296716, Sept. 13, 2005, 2005 CPD ¶ 172 at 2; 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 record establishes a reasonable basis for the cancellation of the solicitation. In response to our request, the Army provided the declaration of the Deputy to the Garrison Commander of the Installation Management Command at Fort Polk, who stated that he was responsible for, among other things, management of Garrison staff, coordination of services at the installation, and resource planning and execution. He stated that, as a result of his office's review, it was determined that "[t]he option to award a separate work reception contract was simply unaffordable and could not be exercised in light of the lack of funding. I therefore directed that the solicitation of this (SAF) contract be stopped." Declaration of the Deputy to the Garrison Commander, June 30, 2009, at 2. The deputy also described how the Army could satisfy the reception services by "directly absorbing work

reception into the available government staffing through a combination of hiring against vacant authorizations and reassigning tasks of existing staff as needed.” Id.

With regard to VetPride’s contention that the agency has a continuing need for these services and its disagreement that the agency lacks the funding to procure these services, we agree that the record establishes the agency’s continuing need. That is why the agency was required to consider other alternatives such as reorganizing its existing staff when it learned that it would not have sufficient funding to procure the services under the contract. Although VetPride disagrees that the agency lacked sufficient funds for this procurement, it does not show that the agency’s decision concerning how it would allocate its available funds was unreasonable. In that regard,

it is not our role to question the unavailability of funds. The management of an agency’s funds generally depends on the agency’s judgment concerning which projects and activities should receive increased or reduced funding and a contracting agency has the right to cancel a solicitation when, as a result of its allocation determinations, sufficient funds are not available.

First Enter., supra, at 3. Accordingly, the protest is denied.

Daniel I. Gordon
Acting General Counsel