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**Comptroller General
of the United States**

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

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Decision

Matter of: KGL Logistics

File: B-404340

Date: January 26, 2011

David C. Hammond, Esq., Amy L. O’Sullivan, Esq., Gunjan R. Talati, Esq., and Richard W. Arnholt, Esq., Crowell & Moring LLP, for the protester. Janet R. Wise, Esq., Timothy J. Ryan, Esq., and Daniel K. Poling, Esq., Department of Defense, Defense Logistics Agency, for the agency. Tracey L. King, Esq., Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of solicitation was reasonable where record shows that agency needed to reassess its needs before proceeding with the procurement.

DECISION

KGL Logistics protests the cancellation of Solicitation No. SP3300-10-R-0020, issued by the Department of Defense, Defense Logistics Agency (DLA) for labor, materials, and the use of existing indoor and outdoor storage space in support of distribution support services in Kuwait. KGL contends that the agency’s rationale for cancellation was unreasonable and a pretext to avoid awarding it the contract.

We deny the protest.

The solicitation provided for award of a contract, for a base period of 1 year with three 1-year options, for use of a contractor-owned, contractor-operated storage and distribution facility in Kuwait. KGL submitted a timely proposal in response to the solicitation. After receiving KGL’s proposal, the agency notified KGL that it was the sole responsible offeror, and that, consequently, it would be required to provide cost and pricing data in support of its proposal. Initial Protest, exh. 4. On August 3, 2010, the agency notified KGL that the agency intended to revise the solicitation to add a cost-reimbursable line item for acquiring material handling equipment, which would need to be acquired in time to meet the schedule in the contemplated contract. Initial Protest, exh 5. KGL states that, in reliance on this direction, it acquired certain material handling equipment for use on the contemplated contract. On August 27, the agency informed KGL that certified cost and pricing data was required

for the procurement. Initial Protest, exh. 7. In response to this notice, KGL advised the agency that it would not provide certified cost and pricing data because its accounting and proposal development capabilities were not sufficiently developed to allow it to submit certified cost and pricing data. Initial Protest, exh. 8. Negotiations, including those related to the agency's requirement for certified cost and pricing data, continued through September 2010.

On October 12, the agency sent KGL a letter canceling the solicitation, explaining that cancellation was necessary due to KGL's unwillingness to certify its cost or pricing data. Initial Protest, exh. 1. In response, KGL asserted that the agency's rationale for canceling the solicitation was unreasonable because certified cost or pricing data was not required for this procurement. Initial Protest, exh. 14. By letter dated October 19, the agency replied that while the question of whether KGL would submit certified cost and pricing data was a concern, a more important factor in the cancellation was the agency's review of various long-term options for distribution support in the area, given the continuing and accelerated troop drawdown in Iraq and the changing needs for distribution services in the region. Initial Protest, exh. 15. The agency explained that it was not clear how long a DLA distribution center in Kuwait would remain an agency requirement. According to the agency, in these circumstances, and given the potential challenges and costs of moving the agency's inventory to a new location and transitioning to a new contractor, it was unwise to enter into a new, long-term contract for the site. *Id.* Rather, in order to meet its ongoing requirements, the agency extended the current contract for the requirement for an additional 6 months (with an option to extend for another 6 months) while it determines the most efficient and effective approach to a DLA distribution capability in the region. Agency Materials, exh. 2.

KGL asserts that the agency's actual reason for canceling the solicitation is KGL's refusal to provide certified cost and pricing data. According to the protester, the agency's position that cancellation is warranted by the alleged uncertainty relating to DLA's requirements in the region is a pretext because the rationale was provided only after KGL had raised the possibility of protesting the request for certified cost and pricing data. The protester further asserts that the agency has a continuing need for the services. KGL requests that we recommend that the solicitation be reinstated and award made to it, or, in the alternative, that we recommend that it be reimbursed the costs of preparing its proposal, including the costs it incurred to acquire the material handling equipment.

We find no merit to KGL's protest. In a negotiated procurement, a contracting agency has broad discretion in deciding whether to cancel a solicitation and need only establish a reasonable basis for doing so. ESM Group, Inc., B-400298.2, Oct. 14, 2008, 2008 CPD ¶ 190 at 2. Moreover, even if an initial justification is unreasonable, that fact is immaterial, provided that another, proper, basis for the cancellation exists. Sunshine Kids Serv. Supply Co., B-292141, June 2, 2003, 2003 CPD ¶ 119 at 2.

Here, we find that the uncertainty surrounding the future need for the services provided a reasonable basis upon which to cancel the solicitation. In this respect, the record includes an affidavit prepared by DLA's Deputy Director of Logistics Operations in which he states:

I spoke with . . . [the] Director of Logistics, Third Army and the US Army Central Command (ARCENT) G4 and the Army Materiel Command Southwest Asia Commanding General Kuwait. [The Third Army Director of Logistics] discussed the Army's drawdown in Iraq and its relation to the Army's need for [the current requirement]. [The director of Logistics, Third Army] indicated that there might not be a continuing need for [the services] beyond mid 2011 and that potentially all the remaining . . . stock could be moved to Army warehouses on Camp Arifjan in Kuwait.

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I also reviewed data that indicates [the solicited] workload had been shrinking and that its current storage utilization had declined over the past several months to about 51 percent capacity and the need would be lower in future years.

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At the same time, DLA and the military services were aware of the mission risks and extensive costs that would be incurred to move the [agency's] inventory to the KGL location, and taking those risks and incurring those costs might not make sense if the [solicited requirement] will close or be substantially downsized soon after the move.

Affidavit of DLA's Deputy Director of Logistics Operations, at 1-2.

As noted by KGL, the record shows that the agency requires the solicited services in the near term. However, the protester has not shown, nor does the record indicate, that the agency's stated concern as to nature and extent of its longer term needs was unreasonable. On the contrary, the record clearly indicates the existence of considerable uncertainty regarding the agency's future needs. Cancellation is appropriate where an agency conducts a reassessment that suggests the solicitation may not reflect its needs, such that the agency is uncertain whether the requirement will exist in the future. Global Solutions Network, B-299424, Apr. 20, 2007, 2007 CPD ¶ 76 at 2. In these circumstances, we find no basis to question the agency's decision to cancel the solicitation rather than enter into a new long-term contract.

As for KGL's request that we recommend that it be reimbursed the costs associated with preparing its proposal, this request is similarly without merit. So long as a

cancellation is reasonable, there is no basis for our Office to recommend reimbursement of the costs associated with the protester's preparation of its proposal. Kenco Assocs., Inc.; Air Prod. and Chem., Inc., B-297503 et al., Jan. 25, 2006, 2006 CPD ¶ 24 at 5.

The protest is denied.

Lynn H. Gibson
General Counsel