

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Holiday Inn; Baymont Inn & Suites

File: B-288099.3; B-288099.4

Date: September 20, 2001

Phillip E. Johnson, Federal Contract Specialists, Inc., for the protesters.
Col. Michael R. Neds and Capt. Anissa N. Parekh, Department of the Army, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of solicitation to provide meals, lodging, and transportation for applicants at a military entrance processing station is not objectionable where the agency had a reasonable basis for the cancellation.

DECISION

Holiday Inn and Baymont Inn & Suites protest the cancellation of request for proposals (RFP) No. DABT23-01-R-0043, issued by the Department of the Army to provide meals, lodging, and transportation for applicants processing at the military entrance processing station in Nashville, Tennessee. The protesters contend that the cancellation was the result of the agency's lack of advance planning, and in retaliation for their earlier protests challenging the unrestricted nature of this RFP and other solicitations for similar services.

We deny the protests.

The agency issued the RFP unrestricted on June 1, 2001, contemplating the award of a fixed-price, requirements contract to provide the required services for a base year, with up to four 1-year options. On June 15, Holiday Inn and Baymont filed protests with our Office challenging the contracting officer's (CO) decision not to set the solicitation aside exclusively for small business participation. In those protests, the firms argued that since they were both small businesses, the agency was required to set the RFP aside exclusively for small businesses. See Federal Acquisition Regulation § 19.502-2(b); American Med. Response of Conn., Inc., B-278457, Jan. 30, 1998, 98-1 CPD ¶ 44 at 2.

Rather than setting the procurement aside for small businesses based on the protesters' representations, the CO decided that further market research was necessary. In this connection, the CO explains that based on her research, she had concluded that both protesters' hotels are affiliated or franchised with national hotel chains and, thus, questioned whether the firms would be small businesses eligible to participate in this procurement. In particular, the CO states that she found that Baymont is owned by a company that also owns dozens of other lodging facilities, casting further doubt on that firm's representation. The CO states that given the results of her research, she was concerned that if the procurement were set aside, there was a possibility that the Small Business Administration (SBA) ultimately would determine that the proposed awardee was not a small business, requiring a new competition. The CO thus decided to cancel the solicitation in order to conduct a more in-depth market survey to determine whether to reissue the solicitation on a restricted basis. Upon learning of the cancellation, the firms withdrew their protests challenging the unrestricted nature of the RFP, and filed the instant protests.

The protesters challenge the cancellation on several grounds. For instance, the protesters contend that the cancellation was the result of the Army's lack of advance planning. In this regard, the protesters assert that the agency's market research was flawed because it did not find any small businesses eligible to compete under this RFP. The protesters also argue that the agency canceled the solicitation in retaliation for their earlier protests challenging the unrestricted nature of this RFP and other solicitations for similar services, suggesting bad faith on the part of the agency.¹ Holiday Inn and Baymont further argue that the cancellation will unduly prolong the issuance of a new solicitation.

In a negotiated procurement, the CO has broad authority to decide whether to cancel the solicitation; there need be only a reasonable basis for the cancellation. Cantu Servs., Inc., B-219998.9, B-233697, Mar. 27, 1989, 89-1 CPD ¶ 306 at 2. Here, we think that the agency's explanation provides a reasonable basis for the cancellation.

¹ The protesters also argue that the cancellation here, together with other cancelled solicitations, evidences a pattern by the Army of improperly issuing unrestricted solicitations for similar services, and then canceling those procurements in response to their protests challenging the unrestricted nature of the solicitations. The fact that the Army has issued other solicitations for similar services on an unrestricted basis is irrelevant to our analysis of the reasonableness of the cancellation here; each procurement is a separate transaction, and an agency's actions under one procurement do not affect the propriety of its actions under a different procurement. See Southern CAD/CAM, B-254201, Nov. 16, 1993, 93-2 CPD ¶ 278 at 4.

The CO explains that prior to issuing the solicitation, she conducted a market survey which included an Internet search on “ProNet,” a website maintained by the SBA.² The CO states that the ProNet search did not reveal any small businesses in the lodging category in the Nashville area. The CO also completed a standard form used to facilitate coordination between the buying activity and the Army’s small business specialist. The CO explains that this coordination allows the small business advocate within the Army and the local SBA to assist in locating eligible small businesses. In the remarks section of the form, the CO noted that historically, the SBA has been unable to identify small businesses, small disadvantaged businesses, or section 8(a) firms for similar requirements in the Nashville area; that the CO’s ProNet search had not identified any small businesses in the area; and that the requirement will remain “full and open.” Agency Report (AR) exh. F, DD Form 2579, May 29, 2001. The record shows that the Army’s small business specialist concurred with the CO’s determination.³

The record further shows that prior to canceling the solicitation, in an effort to obtain further information upon which to determine whether the solicitation should be set aside, the CO requested the protesters to verify that they are, in fact, small businesses. AR exh. H, CO’s Letter June 19, 2001. In that letter, the CO expressed

² Pro-Net is an Internet-based database on small, disadvantaged, 8(a) and women-owned businesses. The SBA’s website describes “Pro-Net [as] an electronic gateway of procurement information—for and about small businesses. It is a search engine for contracting officers, a marketing tool for small firms and a ‘link’ to procurement opportunities and important information. It is designed to be a ‘virtual’ one-stop procurement shop.” <<http://pro-net.sba.gov>> The protesters assert that it was unreasonable for the CO to use this site because “very few small business owners are aware of this service,” suggesting that they are not registered on the site and do not regularly search the site for procurement opportunities for small businesses. Comments at 2. While it is unfortunate that the protesters—both of which claim small business status—lack familiarity with the SBA’s website (which is specifically designed as a tool for small firms to market their capabilities and provides a convenient electronic link to procurement opportunities), the CO’s use of this database is not unreasonable.

³ Although the Army’s small business specialist concurred with the CO’s determination, the protesters complain that the absence of a signature from the SBA representative suggests that the CO did not forward to the form to the SBA for its concurrence. The CO states, however, that she subsequently contacted the SBA’s Nashville office, and the SBA was unable to identify any eligible small businesses. In view of the CO’s statement, we view the lack of SBA concurrence on the form as a relatively minor administrative oversight corrected by the CO contacting the SBA directly and not, as the protesters suggest, an attempt by the agency to bypass the SBA’s approval.

her doubts that either firm is a small business and requested further information verifying their size status. The CO specifically requested that the protesters validate their size; identify the owners of each of the two hotels; identify other business interests of those owners; and provide the gross revenues of those other interests. Id. at 1.

Although both Holiday Inn and Baymont responded with virtually identical letters noting their respective average annual total revenues, neither firm identified the owners of the hotels; nor did they identify or explain whether those owners had other business interests, or provide gross revenues for those other interests, as requested. The record is clear that in the CO's view, the firms' incomplete responses raised questions about their size. The CO states that during subsequent telephone conversations with Holiday Inn and Baymont, rather than confirming their small business size status, both firms provided additional information that cast further doubt on their business size. Specifically, the CO states that Holiday Inn's general manager indicated that the owner of that facility also owned at least four other lodging facilities. Baymont Inn's general manager also confirmed that if the gross receipts of other lodging facilities controlled by the owner of Baymont were considered for purposes of determining business size, Baymont would be a large business. AR exh. B, CO Statement at 3. In addition to contacting the firms directly, the CO also contacted the SBA's office covering Nashville to request that office provide information on the two protesters' hotels, or on any hotel in the Nashville area that would qualify as a small business. According to the CO, the SBA did not have any information on file about the two protesters' hotels, nor could the SBA provide information for any other hotels in the Nashville area that would qualify as small businesses.

The protesters' contention that the agency's market survey shows the Army's lack of advance planning is without merit. The use of any particular method of assessing the availability of small businesses is not required so long as the agency undertakes reasonable efforts to locate responsible small business competitors. PR Newswire, B-279216, Apr. 23, 1998, 98-1 CPD ¶ 118 at 2. Here, we think that the CO took reasonable efforts to verify the protesters' business size and to ascertain the availability of other small businesses eligible for this procurement. The fact that the CO did not identify any small businesses eligible to compete—resulting in the agency issuing the solicitation on an unrestricted basis—did not render the CO's approach unreasonable.

There is also nothing which even suggests that the cancellation was made in bad faith or in retaliation because of prior challenges by these protesters of unrestricted solicitations. We will not attribute unfair or prejudicial motives to contracting officials on the basis of inference or supposition. See GTE Gov't Servs. Corp., B-222587, Sept. 9, 1986, 86-2 CPD ¶ 276 at 10. So long as there is a reasonable basis for doing so, an agency may cancel a solicitation after the announcement of a different course of action in response to a GAO protest. See Atlantic Sci. & Tech. Corp., B-276334.2, Oct. 27, 1997, 97-2 CPD ¶ 116 at 1-2. Here, given the apparently

conflicting information concerning the protesters' eligibility as small businesses, we have no basis to question the CO's decision to cancel the RFP in order to conduct a more in-depth market search to locate responsible small businesses and determine whether the solicitation should be reissued on a restricted basis.⁴

Finally, the protesters' objections to the Army's plan to conduct an in-depth market survey because it will unduly delay issuing a new solicitation is not properly within the scope of our bid protest review authority. Under the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (Supp. IV 1998), and our Bid Protest Regulations, 4 C.F.R. part 21 (2001), our Office's jurisdiction is limited to considering protests involving solicitations already issued by federal agencies and awards made or proposed under those solicitations. Here, since the agency has canceled the underlying RFP, and the protesters' objection does not involve the award or proposed award of a contract, there is no legal basis for us to consider the protesters' allegation that the Army's proposed course of action is improper. See Howard Johnson; Sunrise Int'l Group, Inc., B-287111, B-287111.2, Feb. 2, 2001 (protest that agency's proposed market survey following cancellation of solicitation for similar services will unduly prolong the issuance of a new solicitation summarily dismissed as beyond the scope of GAO's jurisdiction); CardioMetrix--Recon., B-252622.2, April 16, 1993, 93-1 CPD ¶ 329 at 1-2 (dismissal of protest concerning agency's procurement practices, in general, rather than a specific solicitation or award affirmed on reconsideration); National Customer Eng'g, B-250641, Oct. 5, 1992, 92-2 CPD ¶ 226 at 1-2 (generalized allegations of government-wide violations of procurement laws and regulations do not constitute a valid protest).

The protests are denied.

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General Counsel

⁴ We note that, even assuming that there was some personal animus toward the protesters on the agency's part, the protesters still must show that the agency's actions were not reasonable, which they have not done here. Johnson Controls World Servs., Inc., B-285144, July 6, 2000, 2000 CPD ¶ 108 at 5.