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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Goode Construction, Inc.--Protest and Costs

File: B-288655.4; B-288655.5; B-288655.6

Date: January 28, 2002

Robert E. Korroch, Esq., Williams Mullen Clark & Dobbins, for the protester.
Keith A. Moore-Erickson, Esq., United States Coast Guard, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Procuring agency had a reasonable basis to cancel request for proposals where construction schedule required substantial revision that should lower performance cost, and thus result in lower prices on recompetition.
 2. Protester is not entitled to recover protest costs where agency took corrective action in response to protest before agency report due date.
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DECISION

Goode Construction, Inc. protests the decision of the United States Coast Guard to cancel request for proposals (RFP) No. DTCG47-01-R-3EFK15, for the replacement of the central steam plant with natural gas facilities at the Coast Guard Training Center in Cape May, New Jersey. Goode also requests reimbursement of the costs it incurred in filing and pursuing a protest against an earlier award of a contract to Wren, Inc. under the same solicitation.

We deny the protest and the request for costs.

The RFP, issued as a HUBZone set-aside, required the successful contractor to decentralize the steam plant before September 15, 2001, the start of the 2002 heating season. Contracting Officer's Statement, B-288655.4 (COS), at 1. The Coast Guard initially made award to Wren. Goode protested to our Office that the award was improper because the Coast Guard improperly evaluated its proposal. We denied those protests. Goode Constr., Inc., B-288655 et al., Oct. 19, 2001, 2001 CPD ¶ 186. Goode also filed a protest with the Small Business Administration (SBA) challenging Wren's HUBZone contractor status. The SBA upheld the protest by decision of

September 21, which Wren appealed. On October 11, the SBA denied Wren's appeal, affirming its decision that Wren was not a HUBZone contractor. On October 25, Goode protested to our Office that the Coast Guard should be required to rescind the award to Wren and award a contract to Goode. On November 6, the Coast Guard notified Wren that it was terminating its contract (Goode was notified of this action on November 8). The agency also decided to cancel the solicitation and resolicit its requirement in the spring.

Goode now protests the agency's decision to cancel the solicitation, claiming that the agency instead should make award to Goode as the only HUBZone offeror under the original competition.

This argument is without merit. A procuring agency properly may reject all proposals received and cancel an RFP if it has a reasonable basis for doing so. HBD Indus., Inc., B-242010.2, Apr. 23, 1991, 91-1 CPD ¶ 400 at 3. Where cancellation of a solicitation is justified, the fact that a particular offeror otherwise would have been in line for award does not provide a basis for precluding the agency from canceling. See Tender Loving Care Ambulance & Ambulette Co., Inc., B-276571.2, July 17, 1997, 97-2 CPD ¶ 25 (only small business remaining in competition is not entitled to award under small business set-aside where procuring agency had a reasonable basis to cancel request for proposals); HBD Indus., Inc., *supra* (sole remaining acceptable offeror is not entitled to award where agency has a legitimate basis to cancel procurement).

The Coast Guard states that the primary reason it canceled the solicitation and will resolicit the requirement is that the construction schedule under the RFP must be substantially revised. COS at 1. Specifically, the agency explains, when the solicitation was issued, construction was required to be completed within 13 months so that the switchover to the central heating system would be completed by September 15, the start of the 2002 heating season. However, as a result of Goode's protests to our Office and the SBA, performance was delayed, and the work now cannot begin until after the 2002 heating season. The agency now expects to issue the solicitation in the spring, with the work to be performed during the summers of 2002 and 2003, and completed by December 2003. The agency believes this increased performance period will reduce the risk associated with the liquidated damages clause, and therefore will reduce offerors' costs and result in lower prices. *Id.* The agency states that the cancellation also is motivated by a desire to increase competition, since Goode's offer, as it turns out, was the only acceptable one received. *Id.* at 2.

We have found that a reasonable basis to cancel an RFP exists where changes to the solicitation are expected to result in increased competition or lower prices. Robertson Leasing Corp., B-275152, Jan. 27, 1997, 97-1 CPD ¶ 49 at 3. We have also specifically found that a required change in a construction schedule meets the stricter compelling reason standard necessary to support cancellation of an

invitation for bids, where that change likely will result in changed prices. Cedar Valley Corp., B-225475, B-225723, Feb. 24, 1987, 87-1 CPD ¶ 211 at 3. Goode does not argue that the construction schedule does not need to be changed, or that the proposed change will not result in lower contractor costs, more competition, and a potentially lower cost to the government. Accordingly, we conclude that the agency had a reasonable basis for canceling the solicitation instead of making award to Goode.

We also find no merit to Goode's claim for protest costs in connection with its protest here. Under our Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2001), if the contracting agency decides to take corrective action in response to a protest prior to our issuing a decision on the merits, we may recommend that the agency pay the protester its reasonable costs of filing and pursuing its protest, including attorney's fees. However, we will make such a recommendation only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Jack Faucett Assocs.-Recon., Protest and Costs, B-278961.2, B-278961.3, Apr. 17, 1998, 98-1 CPD ¶ 116 at 3. In general, if an agency takes corrective action by the due date for its protest report, we consider such action to be prompt and will not recommend reimbursement of costs. Id.

The SBA denied Wren's appeal on October 11, and Goode filed its protest in our Office on October 25. The Coast Guard then took corrective action (by terminating Wren's contract) on November 9, well before the November 26 due date for its agency report. Under these circumstances, we consider the agency's corrective action to be prompt, and thus find no basis for recommending reimbursement of Goode's protest costs. Goode argues that, since the Coast Guard knew on October 11 that the SBA had denied Wren's appeal, but did not take corrective action for 3 weeks, the corrective action was not prompt. However, the fact that an agency may not have taken corrective action immediately upon learning the relevant facts is not a basis for finding undue delay. Rather, it is our view that agencies should be accorded a reasonable amount of time to consider the relevant facts before proceeding with a course of action. The purpose of awarding costs is not to reward the protester or to punish the agency, but to encourage agencies to take corrective action in response to meritorious protests before protesters have expended additional unnecessary time and resources pursuing their claims. Browning-Ferris Indus. of Hawaii, Inc.-Costs, B-278051.2, Apr. 27, 1998, 98-1 CPD ¶ 122 at 4. Here, because the agency terminated Wren's contract before the report due date, Goode was not required to submit comments, and the purpose of our Regulations was served.

The protest and request for costs are denied.

Anthony H. Gamboa
General Counsel