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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Pike Creek Computer Company, Inc.

File: B-290329

Date: June 21, 2002

John Knupp for the protester.

Elward L. Saul, Esq., Office of Naval Research, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly canceled research topic under solicitation issued in connection with the Small Business Technology Transfer program is denied where record shows that, after consideration by numerous component activities of the Department of Defense, the agency determined that it did not have a requirement for the research.

DECISION

Pike Creek Computer Company, Inc. protests the cancellation of topic No. N02-T019 under program solicitation No. 2002, issued by the Department of Defense (DOD) in support of the Small Business Technology Transfer (STTR) program.¹ Pike Creek argues that the agency improperly canceled the topic prior to the deadline for submitting offers.

¹ The STTR program is similar to the Small Business Innovative Research (SBIR) program under which the cognizant contracting agency obtains a portion of its research requirements from small businesses. Under the SBIR program, agencies enter into funding agreements in the form of grants, cooperative agreements or contracts with small businesses after receiving and evaluating proposals submitted in response to a solicitation. See, e.g., Virginia Accelerators Corp., B-271066, May 20, 1996, 97-2 CPD ¶13 at 1 n.1. Under the STTR program, agencies fund cooperative research and development projects involving small businesses and research institutions such as universities. Small Business Technology Transfer Act of 1992, Pub. L. No. 102-564, 106 Stat. 4256 et seq.

We deny the protest.

DOD issues a single STTR program solicitation once a year, and that solicitation includes research topics identified by various military activities. The solicitation here was issued on January 2, 2002, and included topic No. N02-T019 (a topic identified by the Navy), seeking proposals for research and development activities in the area of active cooling of high heat electronic components. Proposals were due by April 17. On April 12, DOD deleted the subject topic from the STTR solicitation.

Pike Creek maintains that it was improper for the agency to delete the topic only a few days prior to the deadline for submitting proposals, noting that, by the time of the cancellation, it had expended substantial time and resources in preparation of its proposal. The protester requests either that it be awarded a contract for the topic, or that the agency be required to reopen the topic and receive and evaluate proposals for the requirement. Pike Creek also requests reimbursement of its proposal preparation and protest costs.

In a negotiated acquisition such as this one, agencies have broad discretion in deciding whether to cancel a solicitation and need only advance a reasonable basis for the cancellation. Encore Mgmt., Inc., B-278903.2, Feb. 12, 1999, 99-1 CPD ¶ 33 at 3. Cancellation is proper where award under the solicitation would not meet the government's actual needs, and the agency properly may cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known, even if the cancellation occurs after proposals have been submitted. Id.

We have no basis to object to the agency's cancellation of the topic. The agency reports that the selection of research topics for inclusion in the STTR solicitation involves an interactive process among several elements of DOD. Specifically, each service element (in this case, the Navy) submits proposed topics to the Office of the Secretary of Defense, Small and Disadvantaged Business Utilization Office (OSD/SADBU), which then forwards the proposed topics to the Director of Defense for Research and Engineering (DDR&E) for substantive review. After that substantive review, DDR&E either accepts a topic or rejects it based on a determination that the topic does not meet one or more topic selection criteria. Where a topic is rejected, the service element is advised. At that point, the service element may either abandon the topic, rewrite the topic or appeal its rejection. The rewritten/appealed topic is again forwarded to DDR&E, which once again reviews the topic for inclusion in the solicitation. If the topic is again rejected by DDR&E, it is automatically forwarded to an Integrated Review Team (IRT) for review. The IRT then forwards its assessment to the director of OSD/SADBU, which consults with the director of DDR&E in making a final determination of whether to include a topic in the solicitation. Agency Report (AR), Exh. No. 1 (a document reflecting DOD's internal agency procedure for selecting research topics describes the process outlined above).

Here, when the Navy initially submitted the subject topic, it was rejected by DDR&E. Statement of the Navy Program Manager at 4. The topic was then rewritten and resubmitted to DDR&E, which again disapproved the topic, and then forwarded it to the IRT. Id. The IRT, in turn, also disapproved the topic, and sent its recommendation to OSD/SADBU. Id. In the meantime, the Navy's program manager rewrote the topic again and forwarded it, along with numerous other Navy topics, to the STTR program manager. According to the Navy's program manager, he found nothing in DOD's internal guidance that prohibited his forwarding the disapproved topic to the STTR program manager; he concluded that the director of OSD/SADBU would make the final determination as to whether the topic would be included in the solicitation. Id.

After receiving the Navy's list of topics, OSD/SADBU included the subject topic in the solicitation. Statement of the Navy Program Manager at 4-5. After approximately 2½ months had elapsed, the STTR program manager contacted the Navy program manager to ask why the subject topic (along with several other unapproved topics) had been included in the solicitation. Id. The Navy's program manager states that he provided the same explanation outlined above, namely, that he was relying on the director of OSD/SADBU to make a final determination based on the IRT's recommendation and his rewritten topics. Thereafter, various discussions and meetings were held among the DOD component organizations regarding resolution of the question of whether to include the disapproved topics. At the conclusion of these deliberations, the STTR program manager decided to cancel the disapproved topics, and notified prospective offerors using the agency's website. Id.

The agency's explanation provides a reasonable basis for the agency's decision to cancel the protested topic. Through its deliberative process, DOD decided that the topic was not a part of its actual STTR research needs. In the final analysis, the process for selecting topics involves consideration by numerous DOD component activities, and the protester has not identified any basis for our Office to conclude that DOD, as the acquiring activity, improperly or inaccurately determined that its actual needs did not include the subject topic.² While it is unfortunate that this deliberative process took the amount of time ultimately required, this delay does not provide a basis for finding the cancellation improper. See PAI Corp., et al., B-244287 et al., Nov. 29, 1991, 91-2 CPD ¶ 508 at 4-5 (cancellation proper no matter when the information precipitating the cancellation is known or should have been known,

² The protester asserts that the agency improperly deviated from the procedures outlined in its internal guidance for selecting research topics. AR, exh. 1; Supplemental Agency Documents, Exh. 3. Even if the protester is correct, however, these internal agency procedures do not establish legal rights and responsibilities so as to render inconsistent agency action illegal. Modern Technologies Corp., et al., B-278695 et al., Mar. 4, 1998, 98-1 CPD ¶ 81 at 15. Thus, deviation from these internal procedures cannot form a basis for our Office to object to the agency's actions.

even if solicitation is not canceled until after proposals are submitted and protesters have incurred costs in pursuing the award).

As for the protester's request for proposal preparation and protest costs, reimbursement of such costs is predicated on a finding by our Office that an agency's actions violated a procurement statute or regulation. 4 C.F.R. § 21.8(d) (2002). Since, as discussed above, we find nothing objectionable in DOD's decision to cancel the protested topic, we have no basis to recommend that the protester be reimbursed these costs.

The protest is denied.

Anthony H. Gamboa
General Counsel