

**United States Government Accountability Office
Washington, DC20548**

Decision

Matter of: Clark E. Myatt, Agency Tender Official

File: B-311234.2

Date: April 15, 2008

C. Fitch Boles IV, Esq., for the protester.
Mark S. Christopher, Esq., Department of the Navy, for the agency.
Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Where the agency tender official protested the terms of a solicitation issued for purposes of conducting a public-private competition pursuant to Office of Management and Budget Circular A-76, and the agency states that no acceptable private sector offers were received in response to the solicitation, there is no prejudice to the protester from the solicitation provisions at issue, since Circular A-76 requires that the agency either revise and reissue the solicitation, or implement the agency tender.

DECISION

Clark E. Myatt, the designated agency tender official (ATO) with regard to solicitation No. N69450-07-R-0054, which was issued by the Department of the Navy for purposes of conducting a public-private competition pursuant to Office of Management and Budget (OMB) Circular A-76, protests certain provisions of the solicitation.¹

We dismiss the protest.

In September 2006, the Navy announced its intention to conduct a public-private competition pursuant to OMB Circular A-76 for performance of non-guard security support services at government installations nationwide; these services are currently

¹ An ATO is “[a]n inherently governmental agency official with decision-making authority who is responsible for the agency tender and represents the agency tender during source selection.” OMB Circular A-76, attach. D (May 29, 2003).

being performed by approximately 460 civilian and 1480 military personnel. Solicitation No. N69450-07-R-0054 was issued in connection with this pending competition, and Mr. Myatt was designated as the ATO responsible for developing and submitting an agency tender pursuant to the solicitation requirements.

On February 8, 2008, prior to the solicitation's initial closing date, the ATO submitted a protest to this Office, challenging certain provisions of the solicitation which mandated a particular method for calculating the costs of performance by the government's most efficient organization (MEO). The ATO maintained that the solicitation's cost calculation provisions were illogical and unfair.

Following submission of that protest, this Office conducted various telephone conference calls with the ATO, the ATO's counsel, agency counsel, and the contracting officer. During these calls, agency counsel advised our Office that the agency had extended the solicitation's closing date to March 20, and was further considering whether it would amend the solicitation provisions regarding calculation of MEO costs. Accordingly, we dismissed the ATO's February 8 protest.² Clark E. Myatt, B-311234, Mar. 6, 2008.

On March 19, the ATO submitted this protest, again challenging, among other things, the solicitation's cost methodology for comparing the MEO's costs with private offerors' costs, and noting that the agency had neither addressed the ATO's previously identified concerns, nor further extended the solicitation's March 20 closing date.

By letter to our Office dated April 3, the agency states that it did not receive any acceptable private sector offers in response to the solicitation. Accordingly, the agency maintains that "the MEO cannot suffer any competitive prejudice" from the contested terms of the solicitation under which the competition was to be conducted. We agree.

In situations where no acceptable private sector offers are submitted, OMB Circular A-76 directs that the agency must do one of two things: revise and reissue the solicitation, or implement the agency tender. OMB Circular A-76, attach. B, § D.4.d (May 29, 2003). Under either alternative, there is no prejudice to the ATO resulting from the terms of the previously issued solicitation.³ Since competitive prejudice is a

² Where an agency has not determined how it will proceed with regard to a particular issue, a protest based on the protester's projection of how the agency will proceed is premature. See, e.g., Global Solutions Network, Inc., B-294054, B-294054.2, Aug. 10, 2004, 2004 CPD ¶ 161 at 1 n.1.

³ In the event the agency takes subsequent actions which create the potential for prejudice to the MEO, the ATO may thereafter file a timely protest challenging such actions.

necessary element of any viable protest, we have no basis to further review the ATO's allegations. See, e.g., OK Produce; Coast Citrus Distrib., B-299058, B-299058.2, Feb. 2, 2007, 2007 ¶ CPD 31 at 6; CRAssociates, Inc., B-282075.2, B-282075.3, Mar. 15, 2000, 2000 CPD ¶ 63 at 10.

The protest is dismissed.

Gary L. Kepplinger
General Counsel