

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-205278.2**DATE:** August 29, 1983**MATTER OF:** Francis Technology, Inc.**DIGEST:**

1. A protester has the burden of proving its allegations. Allegations of bias based upon inference, speculation, and supposition with nothing more fail to meet the burden of proof.
2. Contracting agencies have broad discretion in determining when it is appropriate to cancel a negotiated solicitation, and may do so by establishing a reasonable basis for the cancellation. Cancellation for lack of funds clearly is proper.
3. A prerequisite to entitlement for reimbursement of preparation costs is arbitrary or capricious Government action with respect to the claimant's bid or proposal. Therefore, when a solicitation cancellation is legally unobjectionable, a protester is not entitled to proposal preparation costs.

Francis Technology, Inc. protests the cancellation of request for proposals No. DAAK10-83-Q-0046 issued by the Department of the Army for the design and fabrication of a rapid flow plating system for 50-caliber gun barrels. The protester alleges that the manner in which the Army handled the procurement was unlawful, arbitrary and capricious, and that the Army's grounds for cancellation were mere pretext. Francis Technology also asks that it be awarded proposal preparation costs in the amount of \$5,000.

We deny both the protest and the claim for proposal preparation costs.

The Army received three proposals in response to the solicitation, which contemplated a cost-plus-fixed-fee contract. Battelle Laboratories' proposed contract price

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was the only one to fall within the Government estimate but because Battelle expressed two exceptions to the scope of work requirements, its proposal was determined to be technically unacceptable. The more serious exception was the proposal to furnish a single-station system, whereas the scope of work required a three-station system. The other proposals, submitted by Francis Technology and Napco, Inc., greatly exceeded the Government estimate. The contracting officer canceled the solicitation because a major revision of the scope of work requirement would be necessary to permit award to Battelle Laboratories and thus to come within the available funding limit, and because there were not enough funds for an award to any other offerors.

Francis Technology alleges the Army acted arbitrarily and capriciously by disclosing to Battelle Laboratories the maximum funding available for the procurement, thereby assuring that other proposals would not receive fair and honest consideration if they offered a price exceeding the funding limit. The protester further alleges that the Army intended either to insure that Battelle was the successful offeror on the contract, or in the alternative, to not award the contract at all. As proof of its allegations, Francis Technology states it is apparent by inference from comparison of the Government estimates in a similar 1980 procurement and in this procurement with Battelle's offers that Battelle had knowledge of the amount of funds available for the procurement. The protester alleges a team engineer involved in the evaluation process candidly admitted as much.

We have repeatedly held that bias will not be attributed to procurement officials based on inference or supposition, and even where bias is shown, we will deny a protest if there is no indication that the bias adversely affected the protester's competitive standing. Alan-Craig, Inc., B-202432, September 29, 1981, 81-2 CPD 263. Here, we have no basis to conclude that Battelle received preferential treatment. While Francis Technology states an Army engineer admitted Battelle had received advance notice as to the funding limit, the affidavit submitted by Francis Technology's president to that effect indicated the engineer had stated Battelle had "more likely than not" provided a dollar estimate to the project as an "independent"

Government cost estimate. This is not an admission that Battelle had knowledge of the limit, or even proof that Battelle provided the estimate; it is only speculation. Moreover, the engineer has furnished an affidavit disputing the facts represented by the protester's president. In any case, Battelle's proposal was determined to be technically unacceptable, thereby rendering moot Francis' arguments that Battelle received preferential treatment. A protester necessarily has the burden to prove its case, and disputed allegations that are based upon inference, speculation, and supposition, do not meet that burden of proof. Sperry Rand Corporation, 56 Comp. Gen. 312, 319 (1977), 77-1 CPD 77.

The protester also disputes the propriety of the cancellation. Contracting agencies have broad discretion in determining when it is appropriate to cancel a solicitation. American Indian Health Systems, Inc., B-206218, July 12, 1982, 82-2 CPD 38. When negotiation procedures are used, the Government need only establish a reasonable basis for the cancellation. Management Services Incorporated, B-197443, June 6, 1980, 80-1 CPD 394.

In this case, the record clearly establishes that the Army had a reasonable basis to cancel. The only proposal found to be within the Government cost estimate and available funding also proposed material deviations from the Scope of Work requirement, which rendered the proposal technically unacceptable.

The next offer in line for award--Francis Technology's--significantly exceeded the funds available for the contract. Agencies clearly have the right to cancel solicitations for lack of funds. Somers Construction Company, Inc.--Reconsideration, B-193929, July 24, 1979, 79-2 CPD 54.

Francis Technology also requests proposal preparation costs in the amount of \$5,000. A prerequisite to entitlement for reimbursement of proposal preparation costs is arbitrary or capricious Government action with respect to a claimant's proposal. Ramsey Canyon Enterprises, B-204576, March 15, 1982, 82-1 CPD 237. Since the cancellation was legally unobjectionable, the Army cannot be found to have acted either arbitrarily or capriciously and, consequently, Francis Technology is not entitled to proposal preparation costs.

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Both the protest and the claim for proposal preparation costs are denied.

for Milton J. Fowler
Comptroller General
of the United States