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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** Ferris Optical

**File:** B-403012.2; B-403012.3

**Date:** October 21, 2010

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### DECISION

Ferris Optical of Chatworth, California protests the issuance of a purchase order to db Hadley & Associates LLC (Hadley) of Venice, Florida, under request for quotations (RFQ) No. VA-262-10-RQ-0107, issued by the Department of Veterans Affairs (VA) for eyeglass services. The protester argues that Hadley is ineligible for award because Hadley lacks the required experience, cannot satisfy the RFQ limitation on subcontracting requirement, does not qualify as a nonmanufacturer of eyeglasses, and its offered price was unreasonably low. Additionally, the protester challenges the agency's evaluation of its quotation.

Subsequent to the filing of this protest, on September 24, 2010, the Small Business Administration (SBA) issued a decision that Hadley was not a small business concern and thus was ineligible for award under this solicitation. As a result of the SBA's decision, the VA decided to terminate for convenience the award to Hadley. Corrective Action Letter, Oct. 8, 2010. The VA states that, since there were no other technically acceptable quotations, it decided to cancel the solicitation. *Id.* Specifically, with regard to Ferris' quotation, the agency states that the quotation was unacceptable because the firms' opticians were not licensed. Agency Report at 7-8.

We dismiss the protests because the agency is terminating the awardee's contract and canceling the solicitation.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2000 & Supp. IV 2004). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Pacific Photocopy and Research Servs.*, B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4.

When an agency terminates an awardee's contract and cancels the solicitation, the agency action renders a protest of that award academic. We do not consider

academic protests because to do so would serve no useful public policy purpose. Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132. We only consider protests against specific procurement actions and will not render to a protester what would be, in effect, an advisory decision. Id. It is not our practice to consider academic questions.

The protester objects to the cancellation and argues that canceling the RFQ before our Office has had an opportunity to render a decision on the issues raised in the protests is premature.<sup>1</sup> Specifically, the protester contends that our Office must resolve the issue of whether its quotation is technically acceptable before accepting the agency's view, in support of its decision to cancel the solicitation, that no acceptable quotations were provided.

The RFQ here required vendors to provide opticians with an American Board Certified Optician license or, if a particular state did not require such a license, then the opticians "must abide by the State Licensing Requirements." RFQ at 10. The RFQ also required vendors to include in their quotations a copy of the licenses for the opticians at each location. RFQ at 69. Ferris was advised during discussions that the agency considered its quotation technically unacceptable because the opticians were not licensed, yet the firm failed to include licensed opticians in its revised quotation. Based on this, the agency reasonably determined that Ferris' quotation was unacceptable.<sup>2</sup>

The protester also requests that our Office recommend that the agency reimburse the protester the costs of filing and pursuing the protest, including attorneys' fees.

Our Office may recommend that a protester be reimbursed the costs of filing and pursuing a protest where the contracting agency takes action which renders a protest academic prior to our issuing a decision resolving the merits of the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(e); Information Ventures, Inc.-Costs, B-294567.2, Nov. 16, 2004, 2004 CPD ¶ 234 at 2. Such a recommendation is generally

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<sup>1</sup> Although the protester objects to the cancellation of the RFQ, the protester in its comments to the agency report, listed numerous alleged problems with the conduct of this procurement and called it a "deeply flawed process" with errors that "call into question the validity and integrity of the procurement." Comments at 8. It would seem that canceling and resoliciting would provide the agency an opportunity to correct these deficiencies.

<sup>2</sup> Although the protester argues that California does not require opticians who operate on federal property to be licensed where they are supervised by attending physicians or optometrists that are licensed, Supplemental Protest at 5, the agency explains that neither VA practice nor the solicitation contemplate that the agency will provide attending physicians or optometrists. Agency Report at 7.

based upon a concern that an agency has taken longer than necessary to initiate corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. Advanced Env'tl. Solutions, Inc.-Costs, B-296136.2, June 20, 2005, 2005 CPD ¶ 121 at 2-3.

In our view, a basis for the award of costs does not exist in these protests, since, as explained above, the Ferris protests are not considered to be clearly meritorious.

The protests are dismissed.

Lynn H. Gibson  
Acting General Counsel