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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: DataTrak Consulting, Inc.

File: B-292502; B-292502.2; B-292503; B-292503.2

Date: September 26, 2003

Terry L. Pechota, Esq., Pechota Leach & Dewell LLP, and Karen D. Powell, Esq., Petrillo & Powell, PLLC, for the protester.

Michael Colvin, Department of Health and Human Services, for the agency.

Paula A. Williams, Esq., Paul I. Lieberman, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency had a reasonable basis to cancel request for quotations and recompetete requirement for third party billing support services where the only quote that was received in response to the initial solicitation was evaluated as unacceptable and the record shows that during the course of evaluation the agency reasonably concluded that initial solicitation no longer meets the agency's needs.

DECISION

DataTrak Consulting, Inc. protests the evaluation of its quotation as unacceptable and the subsequent cancellation of request for quotations (RFQ) No. 03-085, issued by the Indian Health Service (IHS), Department of Health and Human Services (HHS) as a Buy-Indian set aside for third party billing support services at the Ft. Berthold Service Unit/Minnetohe IHS clinic in North Dakota. DataTrak also protests the terms of the revised solicitation, RFQ No. 03-099, issued after cancellation of the initial solicitation. DataTrak challenges the agency's decision on numerous grounds primarily alleging that the agency's evaluation of its quotation was inconsistent with the RFQ evaluation factors and was inadequately documented, and that the agency acted in bad faith in order to avoid issuing a purchase order to DataTrak. The protester also contends that the revised RFQ is unduly restrictive of competition.

We deny the protests.

The initial RFQ was issued on May 16, 2003 under the simplified acquisition procedures set forth in Federal Acquisition Regulation (FAR) subpart 13.3 for the acquisition of other than commercial items.¹ As amended, the initial RFQ calls for the contractor to provide all personnel, supplies, materials and equipment necessary to provide third party claim processing services for the Ft. Berthold Service Unit/Minnetohe IHS clinic. RFQ statement of work (SOW) at 3. Vendors were instructed to provide unit and extended prices on the RFQ schedule for four line items: (1) third party claim processing and filing (paper and/or electronic filing for an estimated 5,000 claims); (2) accounts receivable posting of the estimated 5,000 claims billed by the contractor; (3) revenue generation consultative services (which requires two on-site visits by a consultant to evaluate and recommend improvement of the billing processes at the clinic); and (4) software for electronic claim filing using a clearinghouse compatible with the agency's Resource Patient Management System (RPMS). RFQ schedule at 1; RFQ SOW at 1-2.

Quotations were to be evaluated on the basis of price and the following factors: (1) ability to meet performance schedule, (2) reasonableness of price, (3) responsiveness to requirement, and (4) technical qualifications. RFQ Notice to Quoters (Notice) at 1. Under technical qualifications, the RFQ instructed vendors to furnish full and complete information in its proposal that "need not be more than five pages." *Id.* According to the RFQ, this information was to address the following criteria: technical capability, past performance, revenue generation consultative services, and personnel and management capability.² RFQ Notice at 1-3. In addition, the RFQ identified numerous separate elements under the technical qualification criteria. For example, with respect to technical capability, the RFQ stated:

Each offeror shall specifically outline their third party billing, clearinghouse capability with Indian Health Services, accounts receivable and follow-up, and consultative services in terms of knowledge and experience as it relates to:

- RPMS Third Party Billing software
- RPMS Accounts receivable program
- RPMS Patient Registration program
- Electronic claim filing processing for similar IHS facilities
- IHS coding, data entry, and reimbursement issues
- Privacy Act

¹While an RFQ was used as the solicitation vehicle, the record otherwise reflects the application of terminology usually associated with a negotiated procurement.

²Notwithstanding the requirements of FAR §§ 13.106-1(a)(2) and 13.106-2(a)(2), the RFQ was silent as to how proposals would be evaluated under these factors.

- HIPAA [Health Insurance Portability and Accountability Act] requirements

The process to log and track the receipt and return of all applicable forms to the Service Unit will be evaluated also.

RFQ Notice at 1.

The solicitation further stated that all required information must be provided in order for quotations to be considered responsive and eligible for award and that the agency reserved the right to make award to “other than the low estimated offer” based on technical qualifications. Id. at 3.

The initial RFQ was issued on a limited competition basis to three certified Buy-Indian vendors. Agency Report (AR), Contracting Officer’s Statement at 1. DataTrak’s quotation was the only quote received by the May 23 response date and was evaluated by a three-member evaluation panel as technically unacceptable. Among other things, the evaluation panel was not satisfied that DataTrak had sufficient relevant experience in billing and accounts receivable, noting that DataTrak’s primary strength was in coding and data entry. The evaluators found that while DataTrak specified training in the RPMS billing module, the firm did not describe how its employees were trained, and that DataTrak did not identify training in accounts receivable which is a separate RPMS application. In addition, the evaluators considered DataTrak’s proposal too vague because the firm did not address its past experience using the RPMS Accounts Receivable application or in the RPMS Patient Registration process. The evaluators were concerned that DataTrak did not propose an adequate staffing plan, and that DataTrak had identified only one employee with experience in third party billing and accounts receivable, in light of the volume of claims and accounts receivable identified in the SOW. In sum, the evaluation panel concluded that DataTrak’s quotation was unacceptable because the firm’s quotation failed to satisfactorily demonstrate the ability to provide the billing, accounts receivable, and revenue generation consultative services required by the solicitation. AR exh. 3, Technical Evaluation Report, at 3.

At approximately this same time, the project manager, who was a member of the evaluation panel noted that two SOW requirements--the accounts receivable follow-up and rebilling requirement and the requirement for vendors employees’ past performance in billing and accounts receivable--were not included in the technical evaluation criteria. Consequently, in a June 2 e-mail to the contracting officer, the project manager requested that the “contract bid process” be re-opened. AR exh. 9, E-mail from Project Manager to Acting Senior Contracting Officer. In a subsequent meeting, the procurement officials discussed the “changes that needed to be made in the [SOW],” that the software for electronic claim filing using a clearinghouse compatible with the agency’s RPMS was no longer needed, and that an acceptable quote had not been received in response to the initial RFQ. Thereupon the

contracting officer decided to cancel the initial RFQ and resolicit under a revised solicitation. AR Contracting Officer's Statement at 2. By letter dated June 10, the agency informed DataTrak that the RFQ was canceled because "no responsive bids [had] been received from a responsible bidder in accordance with FAR Part 14.404-1(c)(8)." AR exh. 4, Agency Letter to DataTrak. On June 18, HHS issued the revised RFQ as a Buy-Indian set aside, and the agency received three quotations, including one from DataTrak, by the June 27 response date.

On June 26, DataTrak protested the agency's actions to our Office. Specifically, DataTrak protests the agency's evaluation of its quotation and its conclusion that its proposal was technically unacceptable based on DataTrak's failure to submit sufficient detailed information to demonstrate that the firm could successfully accomplish the SOW requirements. DataTrak asserts that the solicitation recommended submission of a five-page proposal, and that it accordingly submitted technical information within the length of time it was given to respond (5 business days) at a level of detail commensurate with the recommended length of the proposal. Protester's Comments at 3. DataTrak's protest focuses on its belief that HHS deviated from the evaluation scheme set forth in the RFQ by evaluating its quotation on a best value basis, rather than on the "responsiveness to requirements" standard for evaluation set forth in the solicitation. Supplemental Protest (B-292502.2) at 5-6. Citing our decision in SKJ & Assocs., Inc., B-291533, Jan. 13, 2003, 2003 CPD ¶ 3, DataTrak maintains that while the RFQ explicitly reserved the right to make award to other than the low priced vendor based on technical qualifications, it failed to disclose how the technical proposal would be weighted against the other evaluation factors. Accordingly, DataTrak concludes that the agency had no reasonable basis for finding the protester's quotation unacceptable solely on the basis of the technical evaluation.³ Protester's Comments at 6-8. The

³In its initial and supplemental protests, DataTrak goes into great detail to show that the procurement was conducted under the sealed bid procedures of FAR Part 14 rather than the negotiated procedures in FAR Part 15 and that the sealed bid standards for evaluation and cancellation are therefore applicable. For instance, the protester points out that the contracting officer "justified the cancellation by referring to the standards of FAR Part 14 for a cancellation after bid opening." Supplemental Protest (B-292502.2) at 2-3. Moreover, DataTrak asserts that the solicitation made no references to best value or any of the procedures required in a negotiated procurement and insists that the RFQ lacked terms which would have given vendors notice that this acquisition was a best value procurement. Id.; Protester's Comments at 6-8. DataTrak does not specifically challenge the RFQ in this regard; in fact, any protest on this ground after the evaluation was completed would have been untimely. 4 C.F.R. § 21.2(a)(1) (2003).

In any event, while the solicitation did not make clear what the basis for the evaluation and selection would be, the record reflects that the agency did not use the RFQ simply to obtain price quotations for these services. Rather, the RFQ provisions
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agency defends its evaluation of the protester's quotation as technically unacceptable. It argues that DataTrak's quotation would never have been selected for award of the purchase order in any event because the agency determined that its needs had changed, as a result of which cancellation was necessary.

As discussed below, we see no basis to object to the agency's decision to cancel the initial RFQ and resolicit using a revised RFQ that reflects the agency's actual needs. Accordingly, we need not address the agency's evaluation of DataTrak's quotation.

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ. Surgi-Textile, B-289370, Feb. 7, 2002, 2002 CPD ¶ 38 at 2. So long as there is a reasonable basis for doing so, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until offers (or, as here, quotations) have been submitted and evaluated. A-Tek, Inc., B-286967, March 22, 2001, 2001 CPD ¶ 57 at 2-3; Peterson-Nunez Joint Venture, B-258788, Feb. 13, 1995, 95-1 CPD ¶ 73 at 4. Cancellation is warranted where a reassessment of the agency's minimum needs results in an agency no longer having a requirement for an item or service. USA Elecs., B-283269.2, Oct. 5, 1999, 99-2 CPD ¶ 67 at 3.

The record reflects that the agency canceled the initial RFQ and made the decision to resolicit its requirements under a revised solicitation after the project manager's review of the acquisition and her conclusion that the Ft. Berthold Service Unit/Minnetohe IHS clinic's needs had changed. Specifically, the agency reports that its primary reason for canceling and resoliciting this requirement was the agency's determination that the requirement for electronic claim filing using a clearinghouse for billing third parties was no longer needed because these services would be performed in-house. Agency Dismissal Request at 2. In response, DataTrak asserts that the agency "did not have a justifiable change in its needs that would support this action." Supplemental Protest (B-292503.2) at 14. Rather, the protester alleges, the revised RFQ is for the same effort and scope of work as the initial RFQ and DataTrak insists that the agency simply issued the revised RFQ to change the evaluation criteria and thus avoid making award to DataTrak whose quotation in response to the initial RFQ was fully responsive. Id. at 14-16; Protester's Comments at 9-13.

Our review of the record provides no basis for us to question the reasonableness of the agency's cancellation of the initial RFQ. HHS has demonstrated that the cancellation reasonably resulted from the change in the agency's actual needs, which no longer require electronic claim filing services using a clearinghouse for billing

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indicate that the agency intended to use the vendors' responses as the basis for a detailed technical evaluation and tradeoff that is akin to a negotiated procurement, and not to sealed bidding.

third parties. The protester's disagreement with the agency's decision neither shows that the agency's determination of its needs is unreasonable, nor provides a basis for requiring the agency to issue a purchase order for services that the agency does not require. Moreover, the record does not support the allegation that the proffered rationale for cancellation of the initial solicitation is merely a pretext by the agency to avoid awarding a purchase order to DataTrak. We will not attribute bias to an agency on the basis of inference and supposition and, without strong evidence to support such a conclusion, we will not find that agency employees acted in bad faith. Chenega Mgmt., LLC, B-290598, Aug. 8, 2002, 2002 CPD ¶ 143 at 4.

As a final matter, DataTrak challenges several aspects of revised RFQ-03-099. Specifically, the protester contends that the requirements are excessive for an acquisition of this size and duration; for example, the revised solicitation includes additional experience requirements for coders/billers, a detailed staffing plan and requires vendors to have four years of accounts receivable entry and follow-up services. Protest (B-292503) at 11-12. In its consolidated report on the protests, HHS responded to each of these allegations. In its comments on the agency's consolidated report, DataTrak simply states that it "incorporates herein those arguments" and grounds of protest asserted in its initial and supplemental protests. Protester's Comments at 1. Since DataTrak has failed to substantively rebut the agency's position on these issues, we have no basis to consider these allegations. See LSS Leasing Corp., B-259551, Apr. 3, 1995, 95-1 CPD ¶ 179 at 5 n.6.

The protests are denied.⁴

Anthony H. Gamboa
General Counsel

⁴DataTrak has raised various other complaints regarding this procurement each of which we have considered and find without merit.