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

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Decision

Matter of: Superlative Technologies, Inc.

File: B-293709.2

Date: June 18, 2004

Brian A. Darst, Esq., Odin, Feldman & Pittleman, for the protester.
Maj. Graeme S. Henderson, Department of the Air Force, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency had reasonable basis for canceling request for proposals for computer support services after receipt of offers where solicitation was ambiguous with regard to required level of staffing coverage and where user activity significantly reduced its staffing requirement.

DECISION

Superlative Technologies, Inc. (SuprTek) protests the cancellation of request for proposals (RFP) No. F64605-03-R-0024, issued by the Department of the Air Force for computer support services at Hickam Air Force Base, Hawaii.

We deny the protest.

The RFP, which was set aside for 8(a) small businesses, contemplated the award of a fixed-price service contract for a base period of 1 year, with four 1-year options. The solicitation provided for award to the offeror whose proposal represented the best value to the government, with best value to be determined based on an integrated assessment of mission capability (the most important factor), past and present performance, and price (the least important factor). Four equally weighted subfactors were to be considered in the evaluation of mission capability: technical approach, program management, transition/phase-in, and employee retention/attraction.

The RFP, as amended, included a statement of work (SOW) that defined 14 categories of support to be furnished to the 15th Communication Squadron's Network Control Center (NCC) and the Pacific Air Force's Network Operations and Security Center (NOSC) and set out, in a table entitled Service Delivery Summary,

the number of hours required for each category. For example, the SOW called upon the contractor to furnish local area network and metropolitan area network management and administration support to both the NCC and the NOSC, and the Service Delivery Summary defined the number of hours required for this category of support as “8 hours during (0600 to 1800) window.”

Eleven proposals were received by the September 2, 2003 closing date. After evaluation, the source selection authority selected the proposal submitted by DeVine Consulting, Inc. as representing the best value to the government. On February 6, 2004, the agency awarded a contract to DeVine. On February 17, the protester filed a timely size protest with the Small Business Administration (SBA) alleging that DeVine was not a small business eligible to compete for this procurement. SuprTek argued that DeVine’s offer demonstrated that its ostensible subcontractor, SMF Systems Corp., the incumbent and a large business, should be treated as a joint venturer because it would be performing primary and vital requirements of the contract and because DeVine was unusually reliant upon it. See 13 C.F.R. § 121.103(f)(3), (4) (2004). On February 23, after receiving a written debriefing letter from the agency, SuprTek also filed a protest of the award to DeVine with our Office.

By decision dated March 2, the SBA determined that DeVine, which had failed to respond to its request for information, was other than small for purposes of the subject procurement. On March 10, the Air Force issued a modification canceling both DeVine’s contract and the underlying solicitation. On March 19, counsel for SuprTek was informed that the Air Force would be issuing a task order for interim computer support services to SMF.¹ On March 22, SuprTek filed a supplemental protest with our Office objecting to cancellation of the solicitation and issuance of the task order to SMF.² By decision dated March 29, we dismissed SuprTek’s protest of the award to DeVine on the ground that the agency’s cancellation of the solicitation rendered the protest academic.

With regard to the instant protest, the contracting officer explains that he decided to cancel the RFP after review of SuprTek’s initial protest (and a very similar agency-level protest) led him to the conclusion that the RFP’s failure to state the minimum acceptable staffing level for each category of support may have resulted in offerors misunderstanding the government’s needs and attempting to minimize personnel in an effort to control costs. As support for the theory that the solicitation was ambiguous as to required staffing levels, the contracting officer cites the fact that 10 of the 11 offers were rated marginal or worse under the technical approach subfactor (under which the adequacy of proposed staffing levels was evaluated). The contracting officer further notes that after he had determined that the only fair

¹ The task order was in fact issued on March 31.

² SuprTek subsequently withdrew its protest of the task order issued to SMF.

course of action would be to revise the SOW to ensure that all requirements and evaluation criteria were clear and unambiguous, the using activity notified him that “its requirement needed to be reduced by what appeared to be a significant amount (approximately 10 [full time equivalents] of the anticipated minimum of 39).” Contracting Officer’s Statement of Facts at 1. According to the contracting officer, he determined “that it would be most appropriate, considering the possible ambiguity, the decreased manning requirement, and the likelihood of increased competition (through greater availability to 8(a) firms of a smaller contract), to cancel the solicitation and resolicit based upon a clearer, revised Statement of Work.” Id. at 1-2.

The protester takes issue with the contracting officer’s explanation, arguing that the agency’s alleged basis for cancellation is merely a pretext and that its real motivation in canceling the RFP is to give SMF, the incumbent, another opportunity to compete (as a subcontractor). SuprTek argues that the solicitation was not ambiguous as to required staffing levels, and that the pretextual nature of the contracting officer’s argument to that effect is demonstrated by the fact that the re-issued solicitation does not include minimum acceptable staffing levels for the various categories of support. The protester further argues that it is clear from the contemporaneous record that the contracting officer was not aware of a reduction in the user activity’s requirements at the time he made the decision to cancel (and thus could not have relied upon the reduction in making his decision to cancel), and that, in any event, the reductions in required staffing coverage in the solicitation, as re-issued, are minimal. SuprTek maintains that the agency should reinstate the cancelled solicitation and allow the remaining eligible offerors the opportunity to submit final proposal revisions addressing any changes in the agency’s needs.

We think that the agency has demonstrated a reasonable basis for its decision to cancel. In this connection, agencies have broad discretion in deciding whether to cancel negotiated procurements and need advance only a reasonable (as opposed to a compelling) basis for their decisions. Sunshine Kids Serv. Supply Co., B-292141, June 2, 2003, 2003 CPD ¶ 119 at 2. While an allegation that the rationale for cancellation advanced by the agency is merely a pretext states a valid basis of protest, see SMF Sys. Tech. Corp., B-292419.3, Nov. 26, 2003, 2003 CPD ¶ 203 at 4, we will deny a protest where the record demonstrates that a proper basis for the cancellation exists.

As previously noted, the contracting officer cites two bases for his decision to cancel: (1) his recognition that the RFP did not furnish sufficient guidance as to required staffing levels, leading many offerors to propose staffing numbers (for individual categories of support and/or for overall performance) that the evaluators judged inadequate, resulting in downgrading of the proposals’ ratings under the technical approach subfactor; and (2) notification from the user activity of a significant reduction in its staffing requirement. With regard to the first basis, we agree with the protester that the agency’s argument that the solicitation failed to

furnish sufficient guidance to offerors by failing to state the minimum acceptable staffing level for each category of support is undercut by the fact that the RFP, as re-issued, also fails to include these numbers; while the draft version of the revised SOW, dated March 23, 2004, included “minimum coverage” staffing numbers, the final version included in the re-issued RFP does not. The record nonetheless demonstrates that there were ambiguities regarding required staffing coverage in the cancelled solicitation that had an impact on the evaluation of proposals and thus provide a reasonable basis for cancellation. In this regard, the existence of an ambiguity affecting the competition under an RFP furnishes a reasonable basis for cancellation of the solicitation. A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2-4.

Here, for example, the SOW was ambiguous with regard to the required level of staffing coverage for item 2.10, NOSC Enterprise Controller, Event Manager, and Network Defender Support, in that the service delivery summary table specified a required level of coverage of 16 hours (per day) for the item, whereas section 2.10 itself stated that 16 hours coverage per day was required for enterprise controller primary duties, 16 hours coverage per day for network defender primary duties, and 16 hours coverage per day for event manager primary duties. It is apparent from the evaluation record that multiple offerors understood item 2.10 as requiring only a total of 16 hours per day (or two staff positions) of coverage, whereas the evaluators interpreted the item as requiring a total of 48 hours per day (or six staff positions) of coverage, and as a result downgraded the proposals of offerors proposing fewer than six. The foregoing is illustrated by the following excerpt from the evaluation of the proposal of offeror no. 1 (which was repeated in slightly different words in the evaluation of the proposals of offeror nos. 3, 6, and 7):

New Weakness: . . . SOW Task 2.10 requires a NOSC enterprise controller, event manager and network defender support. Each of these three separate tasks must be performed 16 hours per day as stated in the [Service Delivery Summary] at 2.17 and as illustrated in the Work Allocation Table, Appendix 1 to the SOW. The Offeror only proposed 2 personnel to perform 3 16-hour tasks. It is impossible for the 2 proposed personnel to perform the work tasks of what the government estimates as 240 hours per week or six personnel.

Final Proposal Evaluation Report, Feb. 4, 2004, at 10. Other matters that have been clarified in the resolicitation are: (1) the required level of staffing coverage for intrusion monitoring support, a category of support with respect to which multiple proposals were downgraded for failing to offer what the evaluators viewed as a sufficient number of personnel to provide the required 24 hours per day/7 days per week coverage; and (2) the permissibility of cross-utilizing personnel between the NOSC and NCC offices. With regard to the latter point, while the cancelled RFP did not directly address cross-utilization, the re-issued RFP advises that: “The PACAF NOSC and 15CS NCC are separate organizations and personnel cannot be dual-hat to

support both due to mission differences. . . . The two organizations require separate support for each task identified.” Apr. 22, 2004 SOW at 10.

Notification from the user activity as to a significant reduction in its staffing requirement furnished a second reasonable basis for cancellation. Cancellation of a solicitation is appropriate where an agency finds that its needs are no longer accurately reflected by an RFP, such as when there is a significant reduction in the anticipated workload. PAI Corp. et al., B-244287.5 et al., Nov. 29, 1991, 91-2 CPD ¶ 508 at 4; Dynalectron Corp., B-216201, May 10, 1985, 85-1 CPD ¶ 525 at 4. Regarding the protester’s argument that reductions in required staffing coverage in the solicitation, as re-issued, are minimal, our comparison of the service delivery summaries in the cancelled and re-issued RFPs revealed the following changes in 10 of the original 14 categories:

Category of support	July 30, 2003 SOW--Hours Required	April 22, 2004 SOW--Hours Required	Change in required hours of coverage
WAN infrastructure support	16 hours NCC 16 hours NOSC	8 hours NCC 16 hours NOSC	Minus 8 hours per day/40 hours per week
Application and operating systems software support	8 hours NCC 16 hours NOSC	8 hours NCC 24 hours NOSC	Plus 8 hours per day/40 hours per week
Systems integration support	8 hours NCC 8 hours NOSC	8 hours NCC 16 hours NOSC	Plus 8 hours per day/40 hours per week
Boundary and vulnerability assessment support	16 hours NCC 16 hours NOSC	8 hours NCC 16 hours NOSC	Minus 8 hours per day/40 hours per week
Training and certification support	8 hours NCC/NOSC ³	Deleted	Minus either 8 or 16 hours per day/40 or 80 hours per week

³ It was not clear in the original SOW whether coverage for this item was to include 8 hours for NCC and 8 hours for NOSC or 8 hours for the two offices together.

Enterprise controller, event manager, and network defender support	16 hours NOSC or 48 hours NOSC ⁴	Deleted	Minus 16 or 48 hours per day/80 or 240 hours per week
PACAF specific software application support	8 hours NCC 8 hours NOSC	8 hours NCC 16 hours NOSC	Plus 8 hours per day/40 hours per week
End User to End User Information Flow	8 hours NCC 8 hours NOSC	8 hours NOSC	Minus 8 hours per day/40 hours per week
Help Desk Support	16 hours NCC	8 hours NCC	Minus 8 hours per day/40 hours per week
Intrusion Monitoring Support	24 hours per day/7 days per week NOSC	24 hours per day/5 days per week NOSC	Minus 48 hours per week

In sum, the revised RFP reflects a change in required hours of coverage for these 10 categories from between 1,048 and 1,248 hours per week in the canceled RFP, to 840 hours per week in the revised SOW; this reduction in hours (between 208 and 408 hours per week) translates to a reduction of between 5 and 10 employees (out of a total in all 14 categories of at most 39 employees). In our view, a reduction of that magnitude cannot be characterized as minimal.

With regard to the protester's argument that the contracting officer was not informed of the reduction in the user activity's requirements until after he had made his decision to cancel (and thus could not have relied upon the reduction in making his decision to cancel), it is irrelevant whether the contracting officer learned of the reduction before or after he made his decision to cancel because it ultimately supports that decision to cancel. In this regard, an agency may justify a decision to cancel on the basis of a rationale that it did not rely on in making the decision to cancel so long as the rationale would have furnished proper support for the determination to cancel at the time the decision was made. Waste Mgmt. Env'tl. Servs., Inc., B-252553, July 12, 1993, 93-2 CPD ¶ 14 at 5.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ As discussed above, the cancelled solicitation was ambiguous as to the required level of coverage for this item.

