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**Comptroller General
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Decision

Matter of: Rice Services, Inc.; Watson Services, Inc.

File: B-293861; B-293861.2; B-293861.3; B-293861.4

Date: June 15, 2004

Keith L. Baker, Esq., and William T. Welch, Esq., Barton, Baker, McMahon, Hildebrant & Tolle, for Rice Services, Inc., and Philip M. Dearborn, Esq., and Jennifer M. Morrison, Esq., Piliero, Mazza & Pargament, for Watson Services, Inc., the protesters.

Audrey Roh, Esq., Department of Homeland Security-United States Coast Guard, for the agency.

John L. Formica, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against cancellation of solicitation is denied where agency reasonably determined that solicitation did not adequately set forth the agency's needs.

DECISION

Rice Services, Inc. and Watson Services, Inc. protest the cancellation of request for proposals (RFP) No. DTCG84-03-R-AA1049, issued by the United States Coast Guard for full food services at the Coast Guard Academy.

We deny the protests.

The RFP, issued as a set-aside for Historically Underutilized Business Zone (HUBZone) concerns, contemplated the award of a fixed-price contract, for a base period of 1 year, with four 1-year options and five additional "award term" years, to provide all food, personnel, management, supervision, materials and supplies necessary for full food services at the Coast Guard Academy. Among other things, the contractor will be required to manage the dining facilities, stock, replenish, cook and serve food, clean the facilities, equipment and utensils, bus tables, and perform cashier services. RFP, Performance Work Statement (PWS), at 5.

Award was to be made to the offeror submitting the proposal determined to represent the best value to the government based upon the evaluation factors of past performance, technical approach, management approach, and price.¹ Past performance and technical approach were equal in importance and “most important,” while management approach and price were equal in importance and “less important” than the past performance and technical approach factors. The RFP provided for the submission of written proposals as well as oral presentations, and informed offerors that the agency intended to make award without discussions.

The Coast Guard received proposals from Wolf Management Services, Inc., Rice, and Watson, by the solicitation’s closing time. Based on the evaluation of the written proposals and oral presentations, Wolf’s proposal was evaluated as “excellent/low performance risk” under the past performance factor, and “good+” under both the technical approach and management approach factors, at a proposed price of \$52,063,800; Watson’s proposal was evaluated as “excellent/low performance risk” under the past performance factor, “marginal” under the technical approach factor, and “good” under the management approach factor, at a proposed price of \$55,079,563; and Rice’s proposal was evaluated as “adequate/moderate performance risk” under the past performance factor, “good” under the technical approach factor, and “marginal” under the management approach factor, at an evaluated price of \$51,453,881. The source selection authority (SSA) determined that Wolf’s proposal represented the best value to the agency. Source Selection Statement at 1-4.

Upon receipt of the required preaward notice that Wolf was the apparent successful offeror, Federal Acquisition Regulation (FAR) § 15.503(a)(2)(C), both Rice and Watson filed protests with the agency challenging the eligibility of Wolf for award. In accordance with FAR § 19.306, the protests were forwarded to the Small Business Administration (SBA), which ultimately determined “that Wolf does not qualify as a HUBZone [small business concern] for this procurement.” SBA Decision, Feb. 3, 2004.

The Coast Guard then reviewed the evaluations of Watson’s and Rice’s proposals and determined that cancellation of the solicitation would be appropriate. In this regard, the agency noted that Watson’s proposal had been evaluated as “marginal” under the technical approach factor because “it did not clearly meet some specified minimum performance or capability requirements necessary for acceptable contract performance.” Justification for Cancellation at 2. For example, the agency pointed

¹ The source selection plan provided that proposals would be evaluated under the past performance factor as “excellent/low performance risk,” “good/low performance risk,” “adequate/moderate performance risk,” “marginal/high performance risk,” “poor/very high performance risk,” or “neutral/unknown confidence,” and under the technical and management approach factors as “excellent,” “good,” “marginal,” or “poor.” Source Selection Plan at 7.

out that Watson's proposal was "missing training meals and key menu nutritional information"; failed to provide the required number of menu cycles; and that the menus that were submitted "contained a lot of repetition not conforming to PWS requirements in many cases." Id. at 2-3. As for Rice's proposal, the agency noted that although the proposal was evaluated overall as "good" under the technical approach factor, it received a rating of only "marginal" under the food/menus/table service subfactor, the most important subfactor of the technical approach factor. In this regard, the Coast Guard noted that, for example, Rice's proposal was "missing training meals and key menu nutritional information." Id. at 3. The agency also noted that Rice's proposal was determined to be "marginal" under the management approach factor, and specifically evaluated under the corporate experience subfactor, the most important subfactor of the management factor, as failing to demonstrate that Rice had relevant corporate experience. Id. The agency concluded "that there is no acceptable offer from a qualified HUBZone small business concern," and therefore that "cancellation of this solicitation . . . is appropriate and is in the best interest of the Coast Guard." Id. at 6.

Watson and Rice both requested and received debriefings, and these protests followed. The protesters argue that the Coast Guard's evaluation of their respective proposals and the resulting cancellation were unreasonable, with each protester contending that it should be awarded the contract. In challenging the propriety of the evaluation, both protesters assert, among other things, that the agency failed to evaluate their respective proposals in accordance with the terms of the RFP, and specifically question the agency's determination that the proposals failed to provide the required number of menus and nutritional information. Rice Protest, B-293861, at 4; Watson Protest, B-293861.2, at 11; Rice Protest, B-293861.3, at 4.

In its report, the Coast Guard maintains that the cancellation of the RFP was justified because neither Watson nor Rice submitted an acceptable proposal. The agency also asserts that the cancellation was justified because the solicitation itself was defective with regard to the statement of requirements as evaluated under the food/menus/table service subfactor of the technical approach factor.

Specifically, the food/menus/table service subfactor provided, in relevant part, that "offerors shall develop (4) five-week cycle menus and 12 or more training menus (to include low-fat, protein, and carbohydrate meals) . . . to reflect healthy foods." The food/menus/table service subfactor further provided that "[a]ll menus shall be developed in accordance with the requirements set forth in the PWS"; that "[d]aily menus shall provide a minimum of 3,000 calorie per cadet"; and that "[e]mphasis should be on variety and creativity." RFP at 62; RFP amend. 1, at 3.

The Coast Guard explains that, with regard to the training menus, it was "seeking 12 days worth of menus consisting of one breakfast, one lunch, and one dinner for each day," that is, "12 different combinations of breakfasts, lunches, and dinners to constitute a different menu for each day." Agency Report (AR), at 32. However, as

pointed out by the agency, and conceded by the protesters, in response to the requirement for “12 or more training menus,” both Watson and Rice detailed in their proposals only 12 specific meals, including four breakfasts, four lunches, and four dinners. The Coast Guard further explains that the requirement under the food/menus/table service subfactor that all menus were “to reflect healthy foods” was intended to elicit from each offeror information as to how much fat, protein, carbohydrates and calories were in each serving of each food item, and a showing that the daily menus would meet the contracting agency’s requirements. RFP at 62; AR at 33. However, as noted by the agency, neither Watson nor Rice included in their proposals the detailed nutritional breakdown for the proposed meals. The agency reports that it intends to review the areas in the RFP that were evidently confusing or misunderstood by some of the offerors, and then will revise the solicitation, including especially the solicitation language regarding the menus and the PWS, to make the description of the agency’s requirements clearer.² Contracting Officer’s Statement at 6.

Where an agency determines that a solicitation does not accurately reflect its needs, cancellation is appropriate. Rice Servs., Ltd., B-284997.5, Mar. 12, 2002, 2002 CPD ¶ 59 at 4. Further, in a negotiated procurement, an agency has broad authority to decide whether cancellation is appropriate, and provided an agency has a reasonable basis for doing so, it may cancel a solicitation regardless of when the information precipitating the cancellation first surfaces. Id.

Here, we find that the Coast Guard had a reasonable basis to cancel the solicitation. As explained by the agency, and apparently conceded by the protesters, while the Coast Guard sought the submission by offerors of 12 different training meal menus, each consisting of breakfast, lunch and dinner, the solicitation did not clearly provide for this. Accordingly, the solicitation was flawed in this regard. Additionally, although the Coast Guard sought proposals that included detailed nutritional information for the food items comprising the menus in order for the agency to ensure that the nutritional needs of Coast Guard personnel would be met by the selected offeror, the agency reasonably concluded based upon its review of the RFP, and in light of the proposals received, that the RFP failed to adequately convey this to the offerors. We note that the agency’s conclusion in this regard is consistent with the position of Watson and Rice in their initial protests to our Office, where they argued that the agency, in downgrading proposals that did not include specific nutritional information, was improperly imposing a requirement that was not set forth in the solicitation. Rice Protest, B-293861, at 4; Rice Protest, B-293861.3, at 3; Watson Protest, B-293861.2, at 11. In sum, the solicitation failed to adequately

² As noted by the agency, in contrast to Watson and Rice, Wolf apparently understood the agency’s intentions in this regard since Wolf submitted a proposal that detailed the nutritional information and training meal menus as desired by the agency.

set forth the agency's needs with regard to training meal menus and nutritional information regarding the menu items proposed, and the agency's cancellation of the solicitation is thus unobjectionable.

In reaching this conclusion, we have considered Watson's argument that the cancellation of the solicitation was only a pretext, that is, that the agency's motivation in fact was to avoid awarding a contract on a competitive basis. Watson Comments at 4-5. We have closely examined the reasonableness of the agency's actions and, as set forth above, find the cancellation to be reasonable in light of the provisions of the solicitation that were, as conceded by Watson, "ambiguous" or requiring clarification. *Id.* at 10-14; see SMF Sys. Techs. Corp., B-292419.3, Nov. 26, 2003, 2003 CPD ¶ 203 at 4. For example, in arguing that the agency's evaluation of its proposal under the food/menus/table service evaluation subfactor was unreasonable, the protester comments that "[o]nce again, the Agency is penalizing Watson for its own inability to clearly draft a Solicitation which elicits the same response from all offerors." Watson Comments at 13-14. Further, the fact that the Coast Guard discovered the above-noted deficiencies in the RFP after the SBA found Wolf ineligible for award, and did not assert that these deficiencies justified the cancellation of the solicitation until it filed its agency report in response to the protests, does not preclude cancellation of the RFP. An agency may properly cancel a solicitation regardless of when the information precipitating the cancellation arises. Admiral Towing and Barge Co., B-245600; B-245602, Jan. 16, 1992, 92-1 CPD ¶ 83 at 6; see Rice Servs., Ltd., *supra*, at 8 (the tardiness of the agency's determination that a solicitation should be cancelled does not alter the overriding principle that an agency should not proceed with a procurement when it reasonably believes that the resulting contract will fail to meet the agency's requirements).³

The protests are denied.

Anthony H. Gamboa
General Counsel

³ Watson also argues that it should be reimbursed for the costs of preparing its proposal and conducting its oral presentation, because the agency should have been aware earlier of the deficiencies in the solicitation. Watson Comments at 17-19. The expenses Watson (and Rice) incurred in preparing their proposals and conducting their oral presentations are typical costs of doing business and competing for government contracts. Under the circumstances here, where the agency's actions were reasonable, there is no basis for the recovery of such costs. See 4 C.F.R. § 21.8 (a) (2004); Kos Kam-Pelagus, Joint Venture, B-225841, Apr. 1, 1987, 87-1 CPD ¶ 370 at 3.