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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Starlight Corporation, Inc.

File: B-297904.2

Date: April 14, 2006

Susan K. Chelsea, Esq., and R. Patrick McCullough, Esq., McCullough & Associates, APC, for the protester.

Brian A. Darst, Esq., for Empire Aircraft Services, Inc., an intervenor.

Maj. Derek S. Sherrill, Department of the Air Force, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, 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 aircraft services where solicitation was ambiguous with regard to the experience required resulting in possible prejudice to the competition and where one of the reasonable interpretations of the experience requirement overstated the agency's actual needs.

DECISION

Starlight Corporation, Inc. protests that the Department of the Air Force improperly canceled request for proposals (RFP) No. FA4479-05-R-0001, for aircraft services at McChord Air Force Base, Washington.

We deny the protest.

The aircraft services requested under the RFP, issued as a small business set-aside, include transient alert; aircraft wash, lubrication and corrosion control; "follow me"/special purpose vehicles; de-icing, glycol recovery services, and wash water clean up; and emergency or warfare contingency operation services. Starlight was awarded the contract, and Empire Aircraft Services subsequently protested the award to our Office, alleging that the agency deviated from the stated evaluation criteria, which assertedly required certain experience. The agency notified our Office that it would be taking corrective action by reevaluating the offers, and our Office dismissed the protest. After reevaluating the proposals, the agency again determined to make the award to Starlight. Empire filed another protest with our Office on essentially the same basis. In response, the Air Force decided to terminate

the contract with Starlight, cancel the RFP and resolicit the services. In response to the agency's corrective action our Office dismissed Empire's protest as academic. On January 10, 2006, the Air Force terminated Starlight's contract.

On January 20, Starlight protested the Air Force's termination of its contract, and the cancellation of the RFP, which protest we dismissed as untimely on January 27.¹ Meanwhile, the protester requested a telephonic debriefing. In response, on January 19, the agency, for the first time, explained the reasons for the termination of Starlight's contract. Starlight again protested--this time timely--the cancellation of the solicitation, and termination of its contract, on January 30.²

The Air Force stated that it cancelled the RFP and terminated Starlight's contract because it had determined that the solicitation's language was ambiguous regarding whether experience was required for certain aircraft services as a prerequisite to award. Specifically, the Air Force claims that a reading of both the instructions to offerors and the evaluation criteria could lead potential offerors to believe that certain experience was required in a number of areas to receive award, when, in fact, the agency did not intend that any such experience would be required.

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 decision. Superlative Techs., Inc., B-293709.2, June 18, 2004, 2004 CPD ¶ 116 at 3. A reasonable basis for cancellation exists when, for example, a solicitation is ambiguous in a way that affects the competition or overstates the agency's minimum needs, such that the cancellation of the solicitation and the issuance of a revised solicitation would present the potential for increased competition. Global Solutions Network Inc., B-289342.4, March 26, 2002, 2002 CPD ¶ 64 at 3.

The RFP set forth a "best-value" evaluation scheme involving three factors: price, technical proposal and past performance. The technical proposal was to be evaluated on a "pass/fail" basis, and a tradeoff would be made between past performance and price, where past performance was considered "significantly more

¹ Starlight's protest was dismissed as untimely because it was filed more than 10 days after it was informed that its contract would be terminated.

² While the agency asserts that Starlight's protest was untimely filed more than 10 days after it was apprised that its contract would be terminated, we consider the protest to be timely because it was filed within 10 days of when it was apprised of the reasons for the agency's actions. Ten days from January 19 is January 29, a Sunday; thus, Starlight's protest is timely. 4 C.F.R. §§ 21.0(e), 21.2(a)(2) (2006).

important than price,” in order to determine the best value to the government.³ RFP § 52.212-2 addend. ¶ 1.

The RFP’s instructions to offerors for the preparation of the technical proposal consisted of two parts. The offerors were first to address certain mission capability requirements, such as staffing approach and organizational approach. The other part, labeled “Technical Requirements,” required offerors to describe their transient alert experience; their wash, lubrication and corrosion control experience; their deicing, glycol recovery services and wash water experience and method/procedures; and their emergency or warfare contingency operations services experience. RFP § 52.212-1 addend. ¶ 1.d.2.a.2.

The RFP language describing the technical requirements evaluation criterion with regard to the various functional areas does not track the information regarding experience that was requested by the proposal instructions, in that experience was not specifically said to be the subject of the evaluation of most of the various functional areas covered by this factor. Instead, for most of these functional areas, the word “experience” was not specifically included in the description of the criteria, but a “description” and “methodology” of accomplishing the work in these functional areas was generally said to be the subject of the evaluation. Nevertheless, as discussed below, the wording of the criterion suggests that previous experience in various functional areas may be required to receive an acceptable rating. RFP § 52.212-2 addend. ¶ 1.B.2.

For example, regarding transient alert, the pertinent section of the evaluation criterion stated that offerors were to be evaluated on whether they “provided a detailed description to type, quantity of aircraft handled annually for arrival, departing, and maintenance service and the process used in providing previous or current aircraft service.” *Id.* While this could read as only requiring a description that evidences that the offeror has the capability of performing transient alert services, it could also be interpreted as requiring the descriptions of the processes for performing this work be based on actual experience, particularly given that the proposal instructions only requested information regarding the offeror’s experience in this functional area.

With regard to wash, lubrication and corrosion services, the pertinent section of the evaluation criterion stated, “Offeror has provided the type o[r] quantity of aircraft handled annually for interior or exterior wash, corrosion control, lubrication and logistic and dual rails,” so as to demonstrate “sufficient understanding” of this work. Thus, here too, while the criterion could be interpreted that the offeror need only

³ While the agency asserted that this scheme was ambiguously stated in the RFP and this ambiguity was an additional reason for canceling the RFP, we find no material ambiguity.

provide details to show it understands this functional area, it could also be read as requiring experience to be determined acceptable, particularly given the proposal instructions.

Regarding emergency or warfare contingency services, the pertinent section of the evaluation criterion only contemplated an evaluation of the relevant experience.

Empire asserted, without rebuttal, that Starlight lacks experience in several of the functional areas identified in the RFP, which in Empire's view rendered Starlight's proposal unacceptable under the technical requirements evaluation criterion, while Empire possessed all the required experience.

The agency now concedes that the solicitation could be read as requiring this experience, even though it did not intend this to be the case. The agency states that so long as the offeror demonstrated in its proposal that it had the capability of performing these services it should be considered technically acceptable. In this regard, the agency expresses concern that given the emphasis on experience in the solicitation, offerors without experience may have been discouraged from submitting proposals, even though they may have otherwise been able to submit technically acceptable proposals.

As indicated by the above discussion, our review of the record confirms the agency's conclusion that the solicitation was either ambiguous with regard to whether experience was required, or overstated the agency's minimum needs by requiring experience, when, in fact, what the agency intended to require was for the offeror to demonstrate in its proposal that it had the capability of performing these services in order to be found acceptable.⁴ While the protester states that there is no evidence that competition was inhibited by the potential requirement that certain experience was required given the large number of proposals submitted, the record evidences that Empire may have prepared its proposal with the belief that the competition was with offerors who had this experience, and we, therefore, find the competition may have been prejudiced by this ambiguity.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ While Starlight points to several statements in the solicitation to the effect that lack of past performance or experience will not automatically disqualify an offeror, the provisions referenced by Starlight relate to the past performance evaluation criterion, not the technical requirements evaluation criterion.