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Decision

Matter of: National Conference Services, Inc. and Direct Marketing Productions, Inc. d/b/a Technology Forums, Inc.

File: B-311137

Date: April 25, 2008

Antonio R. Franco, Esq., Jonathan T. Williams, Esq., and Gunjan R. Talati, Esq., Piliero Mazza, PLLC, for the protester.

Stephanie A. Kreis, Esq., and William Mayers, Esq., Defense Information System Agency, for the agency.

Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that an agency unreasonably canceled a request for quotations for conference planning services after the receipt of proposals is denied where: (1) the agency decided to continue its co-sponsorship of an annual conference with a recognized scientific, technical, educational or professional organization, as allowed by the Department of Defense's Joint Ethics Regulation; (2) the agency officials involved have explained that they were using the procurement system in good faith, and were not soliciting contractors for the purpose of bringing pressure on their previous conference co-sponsor; and (3) the agency officials involved concluded that a continued partnership with the previous conference co-sponsor was in the government's best interest.

DECISION

National Conference Services, Inc. and Direct Marketing Productions, Inc. d/b/a Technology Forums, Inc. (TFI) protests the cancellation of request for quotations (RFQ) No. 254367, issued by the Defense Information System Agency (DISA) for conference meeting, event and trade show support and services for the DISA Customer Partnership Conference. The protester contends that the decision to cancel the RFQ was merely a pretext to avoid competition.

We deny the protest.

DISA has been hosting its Customer Partnership Conference for the past 5 years, with the Air Force Communications and Electronic Association (AFCEA) serving as

its co-sponsor. AFCEA is an “international non-profit association serving the military, government, industry and academia as a forum for advancing professional knowledge and relationships in the fields of communications IT intelligence and global security.” Contracting Officer’s (CO) Statement at 1.

After using the co-sponsorship arrangement for the 5 prior years, the agency decided to issue a solicitation for a “no cost” conference support services contract for the 2009, 2010, and 2011 conferences. On November 16, 2007, DISA issued the RFQ seeking discounted General Service Administration (GSA) schedule pricing. The RFQ required vendors to provide a full range of conference planning services, including the planning, marketing, registration, set-up, on-site administration, coordination and management of all logistical components of the conference. RFQ attach. 1, at 2.

The RFQ contemplated the award of a fixed-price contract and announced that quotes would be assessed under four evaluation factors: technical/management approach, past performance, other non-cost factors, and cost/price. RFQ Attach. 2. The RFQ advised that the factors of technical/management would be approximately equal in value, and that other non-cost factors would be the least important factor. The RFP also indicated that the non-cost factors would be significantly more important than the cost/price factor, and that award would be made to the quotation offering the best value to the government. Id.

The agency received quotations from eight small business concerns by the December 3 due date, but the quotations were never forwarded to the evaluation team. On the same day, DISA’s Director of Strategic Planning and Information—the senior agency official responsible for this conference—decided to take another course. In a message to agency staff involved in the ongoing procurement, he announced:

I met with AFCEA this noon. They made [the] required [] concessions. I want to stay with them for conference support. So, I do not want us to make an award for conference support from the RFP [sic] responses. Thanks[.]

Agency Report (AR), Tab 13. As a result, the agency cancelled the RFQ the next day, December 4, on the basis that the agency had determined that it was in the best interest of the government to continue its relationship with AFCEA.

TFI protests the cancellation of the RFQ and maintains that the agency’s decision to cancel the solicitation was a pretext to avoid making a competitive award decision. The protester argues that the decision to cancel the RFQ was a violation of the Competition in Contracting Act (CICA) and the Department of Defense (DOD) Joint Ethics Regulations (JER), DOD 5500.7-R, which the protester argues requires DOD components sponsoring a conference to use normal acquisition procedures to

procure any assistance they might need. In addition, TFI argues that the agency apparently engaged the procurement process with no intention of awarding a contract, but only for the purpose of gaining concessions from AFCEA. In TFI's view, this constitutes improper agency action, and it urges our Office to sustain its challenge to the cancellation decision.

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ; in this regard, so long as there is a reasonable basis for doing so, an agency may cancel a RFQ no matter when the information precipitating the cancellation first arises, even if it is not until quotations have been submitted and evaluated. Quality Tech., Inc., B-292883.2, Jan. 21, 2004, 2004 CPD ¶ 29 at 2-3; DataTrak Consulting, Inc., B-292502 et al., Sept. 26, 2003, 2003 CPD ¶ 169 at 5.

DISA maintains that it canceled the RFQ to co-sponsor the conference with AFCEA because it was in the best interest of the government to continue its relationship with AFCEA. DISA explains that the purpose of the conference is to promote a technical exchange between government and industry, to inform the government of industry initiatives and their possible relevance to the DISA mission, and to discuss with industry the agency's plans and concerns regarding its existing programs. DISA contends that its relationship with AFCEA is beneficial because the functions of the AFCEA organization are directly related to DISA's mission and because the large AFCEA membership includes both corporations and individuals that have an interest in the agency's mission.

DISA also states that AFCEA can bring a level of technical expertise to the planning of the conference that a support contractor cannot provide. Under the RFQ, a vendor would help select a conference site and hotel, and would provide conference management support necessary to implement the conference. In contrast, the Memorandum of Agreement (MOA) between DISA and AFCEA anticipates that AFCEA will be involved in substantive aspects of the conferences, to include development of the conference program, as well as matters of scope, theme, agenda and speakers. As a result, DISA argues that co-sponsorship of the conference with AFCEA enhances the quality of the conference for both government and non-government attendees. Finally, the agency maintains that the JER provides the agency with authority to enter into co-sponsorship arrangements for conferences with recognized scientific, technical, educational or professional organizations.

We have reviewed the record here and we see no basis to question the agency's decision that its conference needs would be better satisfied by continuing its co-sponsor relationship with AFCEA. Moreover, we note that the JER anticipates this kind of relationship and recognizes that such co-sponsors can add to the substance of the event and also provide substantial logistical support. JER, DOD 5500.7-R, § 3-206. As DISA claims, the JER allows a DOD component to co-sponsor a conference, seminar or similar event with a non-Federal entity when five criteria are met, including the requirement that:

(3) The non-Federal entity is a recognized scientific, technical, educational, or professional organization approved for this purpose by the DoD Component DAEO, giving due consideration to the prohibition against giving preferential treatment to non-Federal entity in 5 C.F.R. 2635.101(b)(8) in subsection 2-100 of this Regulation (reference(h));

JER § 3-206(b).

In response to the agency's claim that it has authority to co-sponsor conferences with entities like AFCEA, the protester draws a distinction between having the claimed authority under the JER to co-sponsor a conference with a scientific, technical, educational or professional organization, and having a rational basis to cancel a procurement already underway. We appreciate the distinction. The agency's actions here--essentially encouraging private sector entities to incur the significant expense of preparing proposals,¹ while continuing to assess the viability of using a different available approach--is unfair to businesses and a bad procurement practice. Simply put, the government should not be asking private sector offerors to prepare and submit detailed proposals for work the agency has not yet decided to obtain using a procurement.

In response to the protester's comments, we asked the agency to prepare a supplemental report addressing in greater detail the decision to use, and then abandon, the procurement process. In this regard, we have reviewed this record, including the declarations of the agency personnel responsible for these actions, and we find the explanations set forth therein to be credible and reasonable. Specifically, the declaration of the Director of Strategic Planning and Information for DISA explains that he concluded--despite the ongoing procurement--that DISA should continue working with the technical organization here if at all possible, and that there was a value to the agency in its continued collaboration with AFCEA on this conference. Agency Rebuttal, attach. 4, Declaration of DISA Director of Strategic Planning at 1. He also explains that there was no effort here to abuse the procurement process and that the concessions described in his message were matters first raised with AFCEA during the 2007 conference. In addition, agency personnel involved in the procurement process also provided declarations explaining that they were acting in good faith, and had every expectation that they would be awarding a contract for this effort. Agency Rebuttal, attach. 1, 2 and 3. In

¹ Although the agency solicited quotes from FSS vendors, it sought submission of what were essentially proposals, and it anticipated a full-blown evaluation of these quote/proposals in four areas. There is little basis to distinguish the agency's actions during this procurement from the actions it would have used in conducting a standard negotiated procurement using the procedures described in Federal Acquisition Regulation part 15.

short, we see no basis to question these representations, or the Director's determination, made in apparent good-faith, that co-sponsoring these conferences with AFCEA instead of contracting with a vendor to provide conference planning support services would be in the government's best interest.

The protester also disagrees with the agency's description of its role as a co-sponsor of the conference and maintains that DISA is the sole sponsor of the event, and ultimately directs all facets of the conference. The protester contends that in circumstances such as these, the JER requires the agency to follow normal acquisition procedures to acquire support services. DOD 5500.7-R, § 3.206 (c). We do not agree. The record shows that the MOA between DISA and AFCEA for the 2007 conference provides for the sharing of the responsibility of planning the conference to include the scope, theme, agenda and acquiring speakers which is consistent with the JER requirements for co-sponsorship of an event. DOD 5500.7-R, § 3.206. The agency states that it plans to complete a similar agreement for the 2009, 2010, and 2011 conferences as well. On this record we have no basis to question the co-sponsorship agreement.²

The protest is denied.

Gary L. Kepplinger
General Counsel

² The protester argues that the 2007 co-sponsorship agreement between the agency and AFCEA violated the JER in that the agency improperly agreed in the agreement to assume responsibility for non-recoverable costs up to a minimum of \$100,000 that AFCEA might have incurred should DISA cancel the conference. The protester contends that this violates the JER provision that any sponsorship agreement contain a disclaimer of government liability should the agency reduce its level of participation. The protester maintains that if the new agreement contains this language, the arrangement would violate this JER provision as well as other regulations. The 2007 MOA between DISA and AFCEA involves a conference period that is not covered by the instant RFQ and therefore not an issue in this protest. Moreover, the agency reports that it is in the process of completing the necessary requirements for co-sponsoring the relevant conferences with AFCEA and merely provided the 2007 MOA to demonstrate the relationship and shared responsibilities between the two organizations.