



## Decision

**Matter of:** Blue Rock Structures, Inc.

**File:** B-400811

**Date:** January 23, 2009

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Brent Hartness, Blue Rock Structures, Inc., for the protester.  
Isaac Johnson Jr., Esq., United States Coast Guard, for the agency.  
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participated in the preparation of the decision.

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### DIGEST

Procuring agency had a reasonable basis to cancel request for proposals for the design and construction of a Rescue Swimmer Training Facility where the solicitation no longer accurately reflects the agency's requirements and substantial changes to the scope of the project are necessary that may result in increased competition and a decrease in overall costs.

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### DECISION

Blue Rock Structures, Inc. of Pollocksville, North Carolina protests a decision by the Department of Homeland Security, United States Coast Guard to cancel request for proposals (RFP) No. HSCG47-07-R-3EFK21, for a two-phase design-build of a Rescue Swimmer Training Facility at the Coast Guard Support Center, Elizabeth City, North Carolina.

We deny the protest.

Phase I of the RFP was issued as a HUBZone set-aside on January 9, 2008 and required potential offerors to submit for agency review their past performance, basic technical approach, and performance capability information for the design and construction of projects similar in nature to a Rescue Swimmer Training Facility. Phase I RFP at 4. The Phase I RFP advised offerors that after review of this information, the agency would select three, but not more than five, of the highest rated offerors to participate in Phase II of the RFP. Id. at 4, 39.

The agency received 10 timely responses to the Phase I RFP. After evaluation, the five highest-rated proposals, including the proposal submitted by Blue Rock, were selected to receive the Phase II RFP.

On June 16, 2008, the Phase II RFP was issued to four of the five selected firms.<sup>1</sup> Phase II was for the design and construction of the facility, which was to consist of a 32,000 square foot building, a 25 x 50 meter training pool, and support spaces, such as locker rooms, wet rooms, classrooms and instructor spaces. Phase II RFP at 1. The training pool was to include features to simulate an open-ocean rescue environment, such as: 12-foot jump towers, a rotor wash simulation, a helicopter search light, fog and wave generators, dust and night simulation, and a sound system. The original budget for the project was \$12.5 million for design and construction. Agency Report (AR), Tab 2, Contracting Officer's (CO) Statement at 3.

Three proposals, including one from Blue Rock, were received in response to the Phase II RFP. After completion of the technical evaluation, the agency concluded that all of the proposed prices exceeded the budget limitation of \$12.5 million. During discussions, all three offerors were asked to identify areas in their proposals where value engineering recommendations might lower the total price. Value engineering recommendations were received from all offerors, including the protester, on August 14. The agency reviewed the recommendations and issued Amendment No. 008 to adopt some of the recommended changes, including certain suggestions received from the protester.

For example, the original RFP included a concrete or masonry (non-corrosive) building with a pre-cast roofing system, and a multipurpose room with audio visual, instructional, and fitness equipment for classroom and physical fitness training. Amendment No. 008 allowed offerors to propose alternative building materials and systems, including steel structures and cladding in lieu of concrete. The RFP amendment also eliminated the multi-purpose room and all of the associated equipment.

All three offerors submitted revised proposals by the September 12 due date. The agency reviewed the revised proposals and concluded that they were responsive to the revised requirements, and within the budget limitation. After a call for, and receipt of, final proposal submissions, on October 8, the offerors were notified that the RFP was cancelled due to a change in mission requirements.

On October 10, Blue Rock requested a debriefing, but its request was denied on the basis that a debriefing was not required because the proposal was never excluded

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<sup>1</sup> Prior to issuance of the Phase II RFP, one firm was eliminated from the competition because the company was no longer considered a certified HUBZone small business concern. AR, Tab 2, CO Statement at 3.

from the competitive range and was under consideration for award until the RFP was cancelled. AR, Tab 14, Oct. 16, 2008 Letter to Blue Rock. On October 17, Blue Rock filed an agency-level protest objecting to the cancellation on the grounds that it violated Federal Acquisition Regulation (FAR) § 14.404.1(a)(3).

On October 23, the agency denied the protest and advised Blue Rock that the procurement was conducted using negotiated procedures and the agency only needed a reasonable basis for cancellation of the RFP; the agency also explained that the cited FAR Part 14 provisions are not applicable to negotiated procurements. The agency decision further advised that the agency was making substantial changes to the scope of the project by including a Modular Training Simulator (which the agency terms a “Dunker”) along with the Rescue Swimmer Training Facility. This protest to our Office followed.

As in its agency-level protest, Blue Rock contends that the cancellation was improper and violated FAR § 14.404.1(a)(3). It also argues that the cancellation was discriminatory towards HUBZone small business concerns and the HUBZone small business program because, in Blue Rock’s view, the expanded project will no longer be appropriate for a HUBZone small business set-aside.

As explained in the agency’s response to the agency-level protest, an agency, in a negotiated procurement, has broad authority to decide whether to cancel a solicitation, and needs only a reasonable basis to do so. A reasonable basis for cancellation exists when a solicitation does not accurately reflect the agency’s requirements, particularly where cancellation of the solicitation and the issuance of a revised solicitation would present the potential for increased competition, efficiencies or cost savings. If a reasonable basis exists to cancel a solicitation, an agency may cancel the solicitation regardless of when the information first surfaces or should have been known, even if the solicitation is not canceled until after proposals have been submitted and evaluated. Rice Servs., Inc.; Watson Servs., Inc., B-293861 et al., June 15, 2004, 2004 CPD ¶ 167 at 4.

In its report in answer to this protest, the agency advises that it cancelled this solicitation because the current RFP no longer reflects its requirements, and because a substantially revised RFP is being developed, which is expected to result in greater competition and in lower overall cost. The agency reports that the pool construction project was originally planned to include both the Rescue Swimmer Training Facility and the Dunker Facility, but the agency decided to delay construction of the Dunker Facility because of a lack of funding. AR, Tab 22, Declaration of CO at 2. The agency explains that these plans have changed because Congress has now made funds available for both projects. Thus, the agency explains that it will be more efficient to build the entire complex as one project within one building, rather than adding the second feature later. In this regard, the agency states that the efficiencies of combining the two projects include, among other things: single site mobilization and demobilization, better coordinated building design, better coordinated construction, reinstatement of certain of the deleted original scope requirements for

the swimmer training facility, and a reduction in the overall construction time. Id. at 3.

Here, we have no basis to question the agency's determination that having one facility to house its water training requirements results in a more efficient training operation. The increased scope of work associated with combining these training requirements in one facility means that the current RFP does not reflect the agency's requirements. For these reasons, we find that the agency reasonably decided to cancel this RFP.

To the extent that the protester argues that the "bundling" of the two projects will likely result in the new procurement not being set aside for HUBZone business concerns, we note that this argument is speculative, as the new solicitation has not been released. Nonetheless, the agency reports that based on its market research, it has a reasonable expectation that offers will be obtained from at least two responsible HUBZone small business concerns and has determined that the new combined acquisition will again be set aside for HUBZone small business concerns. CO Letter, December 2, 2008.

Blue Rock finally maintains that its protest should be sustained because the agency's report was untimely filed with our Office. Our Bid Protest Regulations, 4 C.F.R. § 21.3 (c), require the contracting agency to file a report within 30 days and the agency's failure to comply with the prescribed time limits may result in resolution of the protest without consideration of the untimely submission. See Price Waterhouse, B-220049, Jan. 16, 1986, 86-1 CPD ¶ 54 at 5. We note that the report was filed with our Office 1 day after the required due date. That said, Blue Rock cannot claim it was prejudiced by the delay, and we believe the facts presented by the agency, which demonstrate that the protest is without merit, may be considered. Land Mark Realty, Inc., B-224323, Dec. 1, 1986, 86-2 CPD ¶ 620 at 2.

The protest is denied.

Gary L. Kepplinger  
General Counsel