



Decision

Matter of: National Defense Advisors, Inc.

File: B-405741

Date: December 13, 2011

Mark T. Johnson, for the protester.
Max D. Houtz, Esq., Maj. Brent Cotton, and LTC John Maher, Defense Intelligence Agency, for the agency.
Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency had a reasonable basis to cancel solicitation where solicitation did not reflect agency's needs and amending the solicitation resulted in a change so substantial that it exceeded what reasonable offerors could have anticipated.

DECISION

National Defense Advisors, Inc. (NDA), of Fairfax Station, Virginia, protests the decision of the Defense Intelligence Agency (DIA) to cancel request for proposals (RFP) No. HHM402-11-R-0235 for an adjunct instructor at DIA's National Defense Intelligence College. NDA also objects to the agency's issuance of a task order to Booz Allen Hamilton, Inc. (BAH), of McLean, Virginia, to fulfill the requirement.

We deny the protest.

BACKGROUND

On August 18, 2011, the DIA published the solicitation at issue as a total small business set-aside seeking proposals for an adjunct instructor to teach up to six graduate-level classes per academic year and to advise at least five thesis students per year at the National Defense Intelligence College. Solicitation Synopsis at 1. The RFP contemplated the award of a fixed-price, level-of-effort contract with a 1-year base period and four 1-year options. RFP at 2. The RFP included a statement of work (SOW) that indicated that the subject matter of instruction was "Intelligence Budget and Congressional Relationships." SOW at 1-2. As amended, the RFP required that proposals be submitted by 1:00 p.m. on September 7. RFP at 1.

The day before proposals were due, the contracting officer learned that the solicitation included an incorrect SOW. Agency Report (AR) at 2. In this regard, the agency explains that in May the college had prepared two different SOWs, one seeking an instructor to teach intelligence budget and congressional relationships courses (“budget courses”) and another seeking an instructor to teach cyber and collections issues and trends courses (“cyber courses”). Contracting Officer’s Statement at 2. On July 28, prior to the posting of the solicitation at issue, DIA had issued a task order to BAH—a large business—for an instructor to teach the budget courses. Id. DIA reports that it mistakenly included the SOW for that instructor position in the current solicitation instead of the SOW for the cyber courses instructor position that still needed to be filled. Agency Request for Summary Dismissal at 1; AR at 1-2.

According to NDA, the Dean of the College of Strategic Intelligence informed the company on September 2 that “the original SOW [for a budget courses instructor] had recently been filled by a [BAH] employee” Protest at 1. Still, on September 7, NDA submitted a proposal in response to the posted SOW for the budget courses instructor. Id. After it submitted its proposal, but before the 1:00 p.m. solicitation deadline, the agency informed NDA (and other offerors) that the posted SOW was incorrect and a new SOW was forthcoming. Contracting Officer’s Statement at 2-3. On September 7, after the solicitation’s original closing time, DIA amended the solicitation to replace the posted SOW that sought a budget courses instructor with a new SOW that sought a cyber courses instructor, and the agency extended the proposal due date to September 16. AR at 2.

On September 13, NDA submitted to DIA a “draft protest letter,” in which NDA argued that the new SOW was “diametrically different” from the original one and that it resulted in a “markedly different solicitation.” Protest, Tab D, NDA Draft Protest Letter, at 1, 2. NDA requested that DIA cancel the amended solicitation.¹ Id. at 1. In response, DIA cancelled the solicitation on September 14. Contracting Officer’s Statement at 4. This protest followed.

DISCUSSION

NDA protests the agency’s “gross mismanagement” of the solicitation and “contract irregularities.” Protest at 1. Specifically, NDA argues that the cancellation of the solicitation and the award of a task order to BAH for a budget courses instructor were “improper.” Protest at 1; Comments at 3. NDA requests the agency terminate

¹ In an email to the agency that accompanied its draft protest letter, NDA warned, “If . . . this solicitation is allowed to continue, competition will not be fair [and] open nor will the best interests of the government be achieved.” Protest, Tab D, NDA Draft Protest Letter, at 1.

the contract with BAH and award a contract to small business offerors for that work. Id.

In a negotiated procurement, a contracting agency has broad discretion in deciding whether to cancel a solicitation, and need only establish a reasonable basis for doing so. Trujillo/AHW, JV, B-403958.4, Oct. 13, 2011, 2011 CPD ¶ 218 at 3; USA Elecs., B-283269.2, Oct. 5, 1999, 99-2 CPD ¶ 67 at 3. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs, Logistics Solutions Group, Inc., B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 3, or where the agency determines that it no longer has a requirement for the item solicited. Peterson-Nunez Joint Venture, B-258788, Feb. 13, 1995, 95-1 CPD ¶ 73 at 4. Moreover, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until proposals have been submitted and evaluated. Brian X. Scott, B-310970, B-310970.2, Mar. 26, 2008, 2008 CPD ¶ 59 at 3.

Here, the agency's decision to cancel the solicitation was reasonable. The DIA mistakenly included in the RFP the SOW seeking an instructor to teach budget courses, and that requirement had already been met under a previously issued task order to BAH. Consequently, the agency no longer had a requirement for the work being solicited. Instead, the college needed an instructor with "vastly different education, experience, and subject matter qualifications" to teach cyber courses. AR at 3. In this regard, replacing the SOW was so substantial a change that it exceeded what potential offerors could have anticipated. See Federal Acquisition Regulation § 15.206(e). Indeed, the protester acknowledged the "dramatic change" and "substantial difference" between the two SOWs and advocated canceling the RFP. Comments at 3; Protest, Tab D, NDA Draft Protest Letter, at 1. Thus, on the record before us where the solicitation did not accurately reflect the agency's needs, we find reasonable the agency's decision to cancel the RFP.

Next, NDA argues that the task order to BAH was an "improper conversion of small business set-aside work to a large business concern." Protest at 3. This allegation is untimely. Under our Bid Protest Regulations, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2011). A protester's receipt of oral information forming the basis of its protest is sufficient to start the 10-day time period; written notification is not required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268 at 2.

Here, NDA was informed on September 2 that the SOW for the budget courses instructor "had recently been filled" by a BAH employee. Protest at 1. Under our Regulations, NDA had 10 days from when it learned BAH was performing the work to file a protest on this ground, i.e., until September 12. Because NDA filed its

protest on September 19, after the 10-day period permitted by our Regulations, the protest allegation is untimely.

The protest is denied.

Lynn H. Gibson
General Counsel