



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Latvian Connection, LLC

File: B-407972; B-407972.2

Date: May 2, 2013

Keven L. Barnes, Latvian Connection, LLC, for the protester.
Capt. Anthony F. Schiavetti, Department of the Army, for the agency.
Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision to cancel solicitation is denied where record shows agency had reasonable basis for cancellation.

DECISION

Latvian Connection, LLC, of Kuwait City, Kuwait, protests the terms of request for proposals (RFP) No. W912D1-13-R-0003 issued by the Department of the Army for a video wall at Camp Buehring, Kuwait. Latvian also protests the agency's decision to not post the solicitation on the FedBizOpps website and the agency's eventual decision to cancel the solicitation.

We deny the protest.

BACKGROUND

The solicitation was for a video wall consisting of a set of monitors with processing hardware and software to allow for the seamless display of multiple images. Contracting Officer's Statement ¶ 1; see also RFP at 3-11. As discussed below, a number of errors occurred during the solicitation process.

On January 17, 2013, the agency posted a listing for the solicitation on usmilitarycontracting.com, a website used by the agency for publicizing solicitations aimed at local sources in Kuwait. Contracting Officer's Statement ¶¶ 3, 4. The listing included a link to a lengthy solicitation document. Soon after the solicitation was listed on the website, the contracting specialist discovered that the solicitation document that was linked to the listing was the solicitation document for a separate,

previous procurement for furniture.¹ Contracting Officer's Statement ¶ 5. In addition to this error, the contracting specialist also discovered that the video wall solicitation document was still in draft form and incomplete. Id. ¶ 6. The contracting officer determined that even though the video wall solicitation document was incomplete and in draft form, the agency should link it to the usmilitarycontracting.com listing as quickly as possible. Id.

On January 22, an incomplete, draft version of the video wall solicitation document was linked to the usmilitarycontracting.com listing.² Id. ¶ 6. The draft solicitation document established January 29 as the due date for proposals. Draft RFP at 1. The draft solicitation document also stated that a date and time for a site visit would be announced later on the usmilitarycontracting.com website. Id. at 12.

On January 28, Latvian filed a protest with our Office asserting that the agency improperly failed to: post the solicitation on the FedBizOpps website; provide offerors with drawings, specifications, and an opportunity for a site visit; and provide an adequate solicitation response time. Protest at 1, 8-10.

On January 29, the agency linked the final, complete version of the solicitation document to the usmilitarycontracting.com listing. Contracting Officer's Statement ¶ 7. The final solicitation document established February 16 as the due date for proposals. RFP at 1. It also established February 11 as the date for the site visit and February 4 as the date by which offerors must register for the site visit. See id. at 12.

Beginning on February 3, the usmilitarycontracting.com website was shut down for a four-day period during which the solicitation was inaccessible. Contracting Officer's Statement ¶ 9. As a result of the shutdown, on February 7 the agency issued a solicitation amendment that extended the due date for offerors to register for the site visit to February 10 and extended the due date for proposals to February 22. RFP amend. No. 0002 at 1.

On February 8, the contracting officer concluded that the temporary inaccessibility to the solicitation, which resulted from the four-day shutdown of the usmilitarycontracting.com website, may have prevented potential offerors from having sufficient time to respond to the solicitation. Contracting Officer Statement ¶ 11. The contracting officer also concluded that because registrations for access to Camp Buehring take the agency three days to process, the agency would be unable to process site visit registrations received by the February 10 deadline in

¹ The errantly linked solicitation document was for solicitation No. W912D1-13-T-0003. Contracting Officer's Statement ¶ 5.

² The draft solicitation listed January 15 as the issue date. Draft RFP at 1.

time for the February 11 site visit. Contracting Officer Statement ¶ 11. For these reasons, the contracting officer decided to cancel the solicitation and re-solicit the requirement “as soon as practicable.” Id. ¶ 12. The contracting officer reasoned that this course of action would maximize competition, provide offerors with ample time for proposal preparation, permit the agency to process site visit registrations prior to the site visit, and permit the agency to “correct any remaining errors in the Solicitation.” Id.

On February 11, the agency cancelled the solicitation. RFP amend. No. 0003 at 1. On February 15, Latvian filed a supplemental protest asserting that the agency improperly cancelled the solicitation as a pretext to avoid resolution of the firm’s initial protest. Latvian E-Mail to GAO (Feb. 15, 2013) at 1.

DISCUSSION

As stated above, Latvian initially asserted that the agency improperly failed to post the solicitation on the FedBizOpps website; provide offerors with drawings, specifications, and an opportunity for a site visit; and provide an adequate solicitation response time. Protest at 1, 8-10. As also stated above, after the agency cancelled the solicitation, Latvian asserted that the agency improperly cancelled the solicitation as a pretext to avoid resolution of the firm’s initial protest. Latvian E-Mail to GAO (Feb. 15, 2013) at 1; see also Comments at 5. Because, as discussed below, we find that the agency had a reasonable basis for canceling the solicitation, we need not address Latvian’s initial assertions regarding the solicitation itself.

A procuring agency has broad authority to cancel an RFP and needs only a reasonable basis to do so. Trade Links Gen. Trading & Contracting, WLL, B-405182, Sept. 1, 2011, 2011 CPD ¶ 165 at 2; A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2. The prospect of increased competition (and the lower prices which often result) generally provides a reasonable basis for an agency to cancel a solicitation. See, e.g., A-Tek, Inc., supra, at 3; FRC Int’l, Inc., B-260078, Apr. 10, 1995, 95-1 CPD ¶ 189 at 2. Further, where a valid basis for cancellation exists, an agency properly may cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known. Daston Corp., B-292583, B-292583.2, Oct. 20, 2003, 2003 CPD ¶ 193 at 3; Pemco Aeroplex, Inc., Aero Corp., B-275587.9 et al., June 29, 1998, 98-2 CPD ¶ 17 at 6.

Where a protester has alleged that an agency’s rationale for cancellation is pretextual, that is, the agency’s actual motivation is to avoid awarding a contract on a competitive basis or to avoid resolving a protest, we will closely examine the bases for the agency’s actions. Superlative Techs., Inc., B-310489, B-310489.2, Jan. 4, 2008, 2008 CPD ¶ 12 at 7; Gonzales-McCaulley Inv. Group, Inc., B-299936.2, Nov. 5, 2007, 2007 CPD ¶ 192 at 5. Notwithstanding such scrutiny, and even if it can be shown that pretext may have in part motivated the cancellation

of the solicitation, the reasonableness standard applicable to cancellation of a solicitation remains unchanged. e-Management Consultants, Inc.; Centech Group, Inc., B-400585.2, B-400585.3, Feb. 3, 2009, 2009 CPD ¶ 39 at 5; Dr. Robert J. Telepak, B-247681, June 29, 1992, 92-2 CPD ¶ 4 at 4.

The record here shows that the agency's cancellation of the solicitation was reasonable. The agency has demonstrated that the cancellation occurred after the agency identified flaws in the solicitation that reasonably could be expected to limit competition. More specifically, after Latvian filed its initial protest, the contracting officer concluded that the four-day period during which the solicitation was inaccessible may have prevented potential offerors from having sufficient time to respond to the solicitation and that the agency would be unable to process site visit registrations in time for the site visit. Contracting Officer Statement's ¶ 11. Latvian itself argued in its initial protest that a longer solicitation response time and a site visit were necessary for adequate proposal preparation. Protest at 1, 8; Comments at 4. In sum, because the record reflects that the solicitation was inaccessible for four days and that conducting the site visit may have been impeded given the time needed to process registrations, we see no merit to Latvian's allegation that the cancellation of the solicitation was merely a pretext by the agency to avoid resolution of the protest.

The protest is denied.

Susan A. Poling
General Counsel