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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Vinculum Solutions, Inc.

File: B-408337; B-408337.2

Date: August 5, 2013

Daniel S. Koch, Esq., Miles & Stockbridge PC, for the protester.
Marcia G. Madsen, Esq., and David F. Dowd, Esq., Mayer Brown LLP, for Booz Allen Hamilton, Inc., an intervenor.
Navid Mehrjou, Esq., Department of the Treasury, Internal Revenue Service, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency had a reasonable basis to cancel solicitation where, based on budget concerns caused by sequestration, the agency determined to perform the services in-house.

DECISION

Vinculum Solutions, Inc. (VSI), of Broomes Island, Maryland, protests the Department of the Treasury, Internal Revenue Service's (IRS) cancellation of request for technical cost proposals (RFTCP) No. 4094, for support services for the earned income tax credit (EITC) program office. Vinculum asserts that the agency improperly cancelled the procurement so that it could award a sole source contract for the same services to Booz Allen Hamilton, Inc. (BAH), of McLean, Virginia.

We deny the protest.

RFTCP 4094 was issued on August 14, 2012 under the agency's Total Information Processing Support Services-4 (TIPSS-4) multiple-award, indefinite-delivery/indefinite-quantity contract. The estimated value of the requirement was \$27,004,847. Agency Report (AR), Tab 16, Independent Government Cost Estimate. Competition for the contract was limited to small business concerns in the management business operations support services (MBOSS) task area. The services were then being performed by BAH under a task order issued pursuant to its TIPSS-3 contract. Contracting Officer's Statement (COS) at 2. After conducting

discussions with vendors, including VSI, the agency requested the submission of final proposal revisions by March 7, 2013. On April 29, however, the agency notified Vinculum and other vendors that the solicitation was being cancelled, explaining the next day that the cancellation was “[d]ue to budgetary constraints.” Id.; AR, Tab 7, Email to Vendors Regarding Cancellation. Meanwhile, on April 26, the IRS issued a task order on a sole-source basis to BAH for support services for the EITC program office for a two-month base period with 2 one-month option periods. Id. Vinculum protests that the agency improperly cancelled RFTCP 4094 so that it could award the work to BAH.¹

In a negotiated procurement, the contracting agency has broad discretion in deciding whether to cancel a solicitation and need only have a reasonable basis for doing so. A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2. 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 cancelled until after proposals have been submitted and evaluated. See SEI Group Inc., B-299108, Feb. 6, 2007, 2007 CPD ¶ 35 at 3. Cancellation of a solicitation is appropriate where an agency finds that its needs are no longer accurately reflected by a request for proposals. Superlative Techs., Inc., B-293709.2, June 18, 2004, 2004 CPD ¶ 116 at 5.

Here, the record indicates that before the agency could issue an award under RFTCP 4094, agency personnel were told to look for ways to reduce costs in light of the budget sequestration, effective March 1, 2013, reducing available funding for the government. COS at 3.² As a result, the agency decided to cancel RFTCP 4094 and instead perform the services in-house. Id. However, since the agency was not yet prepared to perform the services in-house, it issued an interim 4-month task order to BAH to perform the services while they were being

¹ A separate protest allegation, challenging the April 26 issuance of the task order to BAH, was previously dismissed on account of lack of jurisdiction. In this regard, pursuant to 41 U.S.C. § 4106(f), our jurisdiction for considering protests challenging the issuance of task or delivery orders is limited to protests that the order increases the scope, period, or maximum value of the contract under which the order is issued, or a protest of an order valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1). Here, as discussed in our dismissal, the task order that was issued to BAH was for an amount significantly less than \$10 million, and Vinculum did not allege that it increased the scope, period or maximum value of the contract under which the order was issued. B-408337; B-408337.2, June 6, 2013.

² As extended by the American Taxpayer Relief Act of 2012, Pub. L. 112-240, § 901, 126 Stat. 2313, a budget sequestration reducing available funds went into effect on March 1, 2013. Office of Management and Budget Report to the Congress, Mar. 1, 2013.

transitioned. Id. In sum, the record indicates that budget constraints led the agency to determine that a different, less costly approach to providing the required EITC support services was necessary. In this regard, a contracting agency has the right to cancel a solicitation when sufficient funds are not available. Specialized Steel Contractors, Inc., B-408022, May 14, 2013, 2013 CPD ¶ 122 at 2; National Projects, Inc., B-283887, Jan. 19, 2000, 2000 CPD ¶ 16 at 4.

Vinculum argues that the agency did not have to cancel RFTCP 4094 based on budgetary reasons because it could have used the money that is funding the 4-month task order issued to BAH to fund a task order issued under RFTCP 4094 for the remainder of the fiscal year. RFTCP 4094, however, provided for issuance of a task order with a 1-year base period and 4 option years. Thus, it would have been improper for the agency to issue a task order under RFTCP 4094 with the intent of limiting performance to the end of the fiscal year, a period of just more than 5 months. Specifically, an agency may not award a contract or task order with the intent to materially alter it after award. PAI Corp., et al., B-244287.5 et al., Nov. 29, 1991, 91-2 CPD ¶ 508 at 4.

The protest is denied

Susan A. Poling
General Counsel