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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: WKF Friedman Enterprises

File: B-409892.2

Date: September 25, 2014

Matthew Lyon for the protester.

Katherine D. Sweat, Esq., Defense Logistics Agency, for the agency.

Kathleen A. Gilhooly, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's cancellation of a request for quotations is denied where the record reasonably supports the agency's determination that the solicitation did not accurately reflect the agency's requirements.

DECISION

WKF Friedman Enterprises of Clayton, California, protests the cancellation of request for quotations (RFQ) No. SPE7M4-14-T-2061, issued by the Defense Logistics Agency (DLA) for nonmetallic hose assemblies. The protester asserts that the agency lacked a compelling reason to cancel the solicitation after quotations had been received.

We deny the protest.

BACKGROUND

The RFQ sought quotations for 18 nonmetallic hose assemblies for helicopter refueling systems, identified by National Stock Number (NSN) 4720-01-214-009. RFQ at 4. The RFQ listed parts from Robertson Fuel Systems, L.L.C. and Eaton Corporation as approved. *Id.* WKF submitted a quotation for only six surplus Eaton Corporation assemblies, which the protester indicated were manufactured in September 2006. Agency Report (AR), Tab 2, WKF Quotation, at 1, 9. DLA rejected WKF's quotation, based on a calculation that the savings associated with WKF's partial-quantity quotation were not sufficient to justify procuring the parts from multiple sources. AR, Tab 3, Rejection of WKF Quotation. DLA issued a

purchase order to Robertson Fuel Systems for 18 new assemblies. AR, Tab 4, Purchase Order No. SPE7M1-14-M-4900, May 7, 2014.

On May 8, WKF protested to DLA, challenging the calculations on which DLA based its rejection of DLA's quotation. AR, Tab 5, WKF Agency-Level Protest. DLA, in response, acknowledged an error in its calculations, but found that WKF was not an interested party to pursue its protest because there was an intervening quotation that was lower in price, which would have been in line to receive the purchase order before WKF. DLA dismissed WKF's protest on this basis. WKF protested to our Office, speculating that the intervening quoter might have been found technically unacceptable and that WKF therefore had a substantial chance of being selected to receive the purchase order and should be considered an interested party. Prior to submitting an agency report, DLA informed our Office that it would terminate Robertson's purchase order and resolicit the requirements under a new solicitation. We dismissed WKF's protest as academic. WKF protests the cancellation of the RFQ.

WKF asserts that cancellation of the solicitation was improper. Citing Arrowhead Metals, Ltd. v. United States, 8 Cl. Ct. 703 (1985) and the Federal Acquisition Regulation (FAR) at 48 C.F.R. § 14.401-1, WKF argues that DLA needed a compelling reason to cancel the underlying solicitation "after the bids have been opened," and that DLA has not provided such support for the cancellation. Comments at 1, 2.

DISCUSSION

As an initial matter, WKF bases its protest on an incorrect standard with regard to cancelling an RFQ. Although an invitation for bids may only be cancelled after bid opening for compelling reasons, see FAR 14.404-1(a)¹, a contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ. National Conference Services, Inc. and Direct Marketing Productions, Inc. d/b/a Technology Forums, Inc., B-311137, Apr. 25, 2008, 2008 CPD ¶ 80 at 3. In this regard, so long as there is a reasonable basis for doing so, an agency may cancel an RFQ no matter when the information precipitating the cancellation first arises, even if quotations have been submitted and evaluated. Quality Tech., Inc., B-292883.2, Jan. 21, 2004, 2004 CPD ¶ 29 at 2-3. A reasonable basis for cancellation exists and cancellation is appropriate when a solicitation does not accurately reflect the agency's requirements. Skyline ULTD, Inc., B-408961, Dec. 27, 2013, 2013 CPD ¶ 298 at 2; Surgi-Textile, B-289370, Feb. 7, 2002, 2002 CPD ¶ 38 at 2. Here, as discussed below, we see no basis to object to the agency's decision to cancel the initial RFQ in order to revise the RFQ to reflect the agency's actual needs.

¹Arrowhead Metals, Ltd. v. United States, 8 Cl. Ct. 703 (1985), cited by the protester, concerned an invitation for bids.

In response to the current protest, DLA states that, after WKF filed its protest, the agency determined that the RFQ as issued does not accurately reflect the agency's needs. Specifically, DLA states that because the lower-priced quotations it received were for surplus parts, and because the parts quoted by WKF were 8 years old, the agency considered whether it needed to take into account the part's shelf-life. In this regard, DLA's policy requires that products delivered under contracts for material with shelf-life requirements specified in the item description have a minimum of 85% shelf-life remaining at the time of receipt by the Government.² AR at 2; Tab 13, Defense Logistics Directive (DLAD). The agency therefore asked one of the manufacturers, Eaton, whether the part was made of materials subject to degradation. Eaton informed DLA that its approved hose assembly contains rubber hose and Nitrile couplings that degrade over time, and that the hose assembly had a shelf life of 32 quarters, or 8 years.³ AR at 2; Tab 12, Eaton E-Mail to DLA, July 7, 2014. Since the RFQ did not include the required DLAD clause 52.211-9024, Shelf-Life Items Manufacturing Restrictions, the agency decided to cancel the RFQ in order to resolicit with an item description that includes the requirement for a shelf-life of eight years. AR at 2.

In response, WKF expresses several objections to the agency's actions, without rebutting the reasonableness of the agency's explanation. For example, WKF argues that the agency did not consider the shelf-life issue until after it had canceled the solicitation. We need not consider this issue, since an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises; the issue remains whether agency had a reasonable basis to do so. See Quality Technology, Inc., supra., at 2-3.

WKF also argues that it was improper for DLA to rely on information obtained from Eaton, the manufacturer of the part, regarding the part's shelf-life, because Eaton is, in WKF's view, an "interested party" with some financial incentive to remove WKF as a competitor. Protester's Comments at 2. This argument has no merit. Eaton is not a competitor or an interested party in this procurement, and we find no basis to object to the agency contacting the quoted part's actual manufacturer in order to obtain objective facts about the material composition of the part.

WKF also asserts that the units have been purchased by the government since at least 1986 without a shelf-life requirement, but "this is DLA's first claim that a shelf life requirement precludes the purchase of surplus material." Comments at 2. First,

² WKF's quotation of surplus hose assemblies manufactured in 2006 would not appear to satisfy this requirement.

³ The Nitrile coupling was stated to have a shelf-life of 40 quarters or 10 years, and the hose a shelf-life of 32 quarters or 8 years. AR at 2.

we note that the agency has not determined that it cannot accept surplus material, but only that surplus parts must meet certain shelf-life requirements, and that those requirements must be identified in the solicitation. Moreover, what happens under one procurement does not determine the propriety of what occurs under another procurement. Each procurement action is a separate transaction, and the action taken under one is not relevant to the propriety of the action taken under another procurement for purposes of a bid protest. See *Komatsu Dresser Co.*, B-251944, May 5, 1993, 93-1 CPD ¶ 369 at 3-4.

The protest is denied.

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General Counsel