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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Computers Universal, Inc.

File: B-410790.2

Date: February 25, 2015

Peter L. Cannon, for the protester.

Capt. Ahsan M. Nasar and Scott N. Flesch, Esq., Department of the Army, for the agency.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency decision to cancel a solicitation after receipt of proposals was reasonable where the agency sought to increase competition, having determined that some solicitation requirements may have exceeded its needs and been too restrictive.

DECISION

Computers Universal, Inc. (CUI), protests the Department of the Army's cancellation of request for proposals (RFP) No. W9124D-14-R-0022, for quality assurance, server administration, application, and network support services for the U.S. Military Entrance Processing Command. The protester asserts that the cancellation lacked a rational basis.

We deny the protest.

BACKGROUND

The RFP, issued on September 19, 2014, was limited to contract holders under the General Services Administration's (GSA) 8(a) STARS II Government-Wide Acquisition Contract. RFP at 22.¹ Award was to be made on a lowest-price,

¹ The agency advises that the estimated value of the task order to be awarded under the RFP exceeded \$10 million and thus it is within our jurisdiction. See e-Management Consultants, Inc.; Centech Grp., Inc., B-400585.2, B-400585.3, Feb. 3, 2009, 2009 CPD ¶ 39 at 6.

technically acceptable basis. RFP at 27. Proposals were evaluated under three factors: technical, including subfactors for management, staffing, and experience; past performance; and price. RFP at 27-28.

CUI's proposal was the only proposal received in response to the RFP. Contracting Officer's Statement (COS) at 1. The protester was advised on November 3 that its proposal "was determined to be technically unacceptable," and that "[f]or the above and other reasons," the RFP would be canceled and the requirement resolicited with a revised performance work statement (PWS). Letter from the Contracting Officer (CO) to CUI, Nov. 3, 2014. CUI subsequently received a written debriefing, advising that its proposal had been found to be technically unacceptable due to multiple specific deficiencies under the technical evaluation factor. Debriefing, Nov. 13, 2014. This protest followed.

DISCUSSION

CUI asserts that the cancellation of the RFP was a pretext to avoid making award to it, the only offeror. According to CUI, the Army had developed a "scheme" to disqualify competitors so that award could be made to another vendor. Protest at 2. The protester further asserts that "the only reason the solicitation was cancelled" was because its proposal was unreasonably evaluated. Id.

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. 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., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2-3. A reasonable basis to cancel also exists when an agency determines that a solicitation does not accurately reflect its needs. See, e.g., Gordon & Soraya Diase Coffelt, B-408025, May 30, 2013, 2013 CPD ¶ 137 at 2-3; MedVet Dev. LLC, B-406530, June 18, 2012, 2012 CPD ¶ 196 at 2-3. Further, as long as there is a reasonable basis for doing so, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until offers have been submitted and evaluated. Id. Where the record reflects that there was a reasonable basis to cancel the solicitation, we will not find that the agency abused its discretion, even though it could have taken a different course by amending the solicitation. See Skyline ULTD, Inc., B-408961, Dec. 27, 2013, 2013 CPD ¶ 298 at 2.

Where, as here, 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 basis for the agency's actions. Superlative Techs., Inc., B-310489, B-310489.2, Jan. 4, 2008, 2008 CPD ¶ 12 at 7. Notwithstanding such scrutiny, however, the

reasonableness standard applicable to cancellation of a solicitation remains unchanged. e-Management Consultants, Inc.; Centech Grp., Inc., supra, at 5.

Here, the contracting officer advises that she determined that “the solicitation was in fact too restrictive and it was in the public’s interest for this solicitation to be cancelled and the requirement to be re-solicited with a revised performance work statement.” COS at 2. In this regard, the contracting officer refers to a teleconference on October 30, after the closing date, in which the contracting officer, contract specialist, and agency program officials participated. COS at 2; see Agency Report (AR), Exh. 5, Teleconference Notes. The contemporaneous record indicates that the following points were made during the teleconference:

No award can be made based on the results of the solicitation.

Solicitation could receive more response if \$8 million experience threshold lowered.

Phase-in period established on the PWS [Performance Work Statement] would assist new contractor in taking on new consolidated requirement.

Inclusion of workload data could assist offerors in contract pricing.

Number of years of experience for the various positions was excessive.

Id. Accordingly, a recommendation was made during the teleconference to cancel the RFP and reissue it with a revised PWS. Id.

We conclude that the Army’s decision to cancel the RFP was reasonable. As noted, the possibility of increased competition generally provides a reasonable basis for an agency to cancel a solicitation. See, e.g., A-Tek, Inc., supra, at 2-3. Here, the record indicates that the agency concluded that revision of certain solicitation requirements could lead to increased competition. COS at 2; Teleconference Notes, at 2. In particular, the record indicates that the Army recognized that some RFP requirements may have been “excessive,” and believed that lesser corporate and personnel experience requirements, the inclusion of a phase-in period, and furnishing workload data, may lead to increased competition beyond the single offer received under the current solicitation. Id. While the protester asserts that the cancellation was pretextual and was part of a scheme to steer the award of this requirement to a favored vendor, the fact that only a single proposal was received supports the agency concern that the solicitation may have been unduly restrictive of competition. Additionally, despite the protester’s claim, there is no convincing evidence that cancellation was motivated by bad faith, rather than concern with the extent of competition. See Career Innovations, LLC,

B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-9 (government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof). In these circumstances, we conclude that the protester has not shown that cancellation of the RFP was improper.

Technical Evaluation

The protester also challenges the Army's finding that its proposal was technically unacceptable. In this regard, it is clear that the agency's determination that CUI's proposal was unacceptable (and therefore could not form the basis for award) was a factor in the agency's decision to cancel the RFP. See COS at 2. As set forth above, however, cancellation of the RFP was also motivated by other considerations, such as enhancing competition beyond the single offer received using less restrictive specifications. COS at 2. As discussed, these rationales, in themselves, justified cancellation of the RFP. Accordingly, even were we to find unreasonable the Army's determination that CUI's proposal was technically unacceptable, we nonetheless would conclude that the agency's decision to cancel the solicitation was reasonable. Thus, the protester was not prejudiced by any errors in the evaluation of its proposal. See GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 7-8 (prejudice is an essential element of every viable protest and, where it is not demonstrated or otherwise

evident, we will not sustain a protest allegation, even where the record shows that the agency's actions arguably were improper).²

The protest is denied.

Susan A. Poling
General Counsel

² In any case, our review of the Army's evaluation indicates that the determination that CUI's proposal was technically unacceptable was reasonable. In this regard, the Army found CUI's proposal unacceptable under each subfactor of the technical factor, AR, Tab 15, Source Selection Evaluation Board (SSEB) Report, at 2-3, while the RFP provided that "[a]n unacceptable rating in any subfactor will automatically carry forward to the factor rating." RFP at 28. For example, with regard to the experience subfactor, the RFP required offerors to describe their relevant experience, including how the listed contracts were similar in size, with a minimum dollar value greater than \$8 million per year. RFP at 25. CUI, however, listed a single contract, with a final awarded dollar amount of approximately \$2 million per year, AR, Tab 9, CUI Technical Proposal, at 33-34, leading the agency to find that CUI had "failed to identify contract experience with a total cost of similar proportions," SSEB Report at 3. Since this finding was clearly reasonable, and under the terms of the solicitation the resulting unacceptable rating under this subfactor required an unacceptable rating under the technical factor, RFP at 28, this in itself, even apart from the other agency findings of unacceptability, warranted rejection of the proposal as technically unacceptable.