



United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: SupplyCore Inc.

File: B-411015.8

Date: May 27, 2016

William E. Hughes III, Esq., and Emily A. Constantine, Esq., Whyte Hirschboeck Dudek S.C., for the protester.

Erika L. Whelan Retta, Esq., and Jennifer Leavengood, Esq., Department of the Air Force, for the agency.

Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's decision to cancel a solicitation for a foreign military sale is denied where the agency reasonably determined that the solicitation no longer accurately reflected the customer's requirements.

DECISION

SupplyCore Inc., of Rockford, Illinois, protests the cancellation of request for proposals (RFP) No. FA8505-13-R-31138, which was issued by the Department of the Air Force, for a Foreign Military Sales procurement for F-15 fighter jet transportation support services (TSS) for the Royal Saudi Air Force (RSAF). SupplyCore contends that the cancellation was improper.

We deny the protest.

BACKGROUND

The RFP, which was originally issued on June 6, 2013, and subsequently amended nine times, sought proposals for comprehensive fleet management for various special-purpose vehicles and trailers to support base stand-ups and continued

RSAF operation of F-15s. RFP, Performance Work Statement (PWS), at 326.¹ The contractor was to provide all transportation and support services required to source, procure, track, warehouse, and deliver assets needed within the Kingdom of Saudi Arabia to support RSAF F-15 operations. Id. at 327. The RFP contemplated the award of a single, indefinite-delivery/indefinite-quantity contract, with a 12-month basic ordering period and four 12-month option ordering periods. RFP at 3.

The Air Force originally selected SupplyCore's proposal for award. Following the initial award to SupplyCore, our Office sustained in part the protests of two disappointed offerors. See Al Raha Group for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134.² The Air Force followed our recommendation to conduct a new past performance evaluation and issue a new award decision, and again selected SupplyCore's proposal for award. Following the second award to SupplyCore, our Office sustained in part protests filed by three disappointed offerors. See Logistics Mgmt. Int'l, Inc., et al., B-411015.4 et al., Nov. 20, 2015, 2015 CPD ¶ 356.

On February 22, 2016, the Air Force notified offerors that it was canceling the solicitation. Agency Report (AR), Tab 17, Cancellation Notice (Feb. 22, 2016), at 1. Specifically, the agency's notification indicated as follows:

Given the amount of time that has passed between the original TSS RFP and the second GAO protest decision, the program team has been asked to perform a re-assessment of the RSAF's TSS needs. A determination has been made that the associated services aspects (ex: Local Purchase, Warranty Tracking, EDE [electronic data exchange]) are no longer required. Only the supply portion remains. As such, the TSS services solicitation will be canceled in its entirety, and the remaining supply requirement will be procured via a full and open competition.

Id. This timely protest followed.

DISCUSSION

SupplyCore argues that the Air Force's cancellation of the RFP is unreasonable. In this regard, the protester challenges the reasonableness and timing of the agency's

¹ References herein to page numbers are to the pagination provided by the agency in its report in response to the protest. Furthermore, references herein to the RFP are to the version conformed through amendment No. 9.

² Our Office denied a third protest challenging the original award to SupplyCore. See Dalma Tech² Co., B-411015, Apr. 22, 2015, 2015 CPD ¶ 135.

determinations that certain services are no longer required, and argues that the changes to the required supplies are minimal in nature. SupplyCore generally alleges that the cancellation is a pretext to avoid implementing corrective action in response to our prior decisions. The agency responds that canceling the RFP was reasonable due to material changes to the scope and timing of the RFP's required services and supplies. We find no basis to sustain the protest.

In a negotiated procurement, such as this one, a contracting agency has broad discretion in deciding whether to cancel a solicitation, and need only establish a reasonable basis for doing so. KNAPP Logistics Automation, Inc.--Protest & Costs, B-404887.2, B-404887.3, July 27, 2011, 2011 CPD ¶ 141 at 3. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. Zegler, LLC, B-410877, B-410983, Mar. 4, 2015, 2015 CPD ¶ 168 at 3; Applied Resources, Inc., B-400144.7, B-400144.8, July 31, 2009, 2009 CPD ¶ 161 at 2. An agency properly 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. MetroStar Sys., Inc., B-408870.3, Sept. 5, 2014, 2014 CPD ¶ 268 at 4.

Where, as here, a protester alleges that the agency's rationale for cancellation is a pretext, that is, that the agency's actual motivation is to avoid awarding a contract on a competitive basis, we will closely examine the reasonableness of the agency's actions in canceling the acquisition. VIRE Consulting, Inc., B-408148.2, Nov. 26, 2013, 2013 CPD ¶ 272 at 3. Notwithstanding such closer scrutiny, however, the reasonableness standard applicable to the cancellation of a solicitation remains unchanged. Id.; Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 3. We find that the record reasonably supports the agency's decision to cancel the RFP because it no longer accurately reflected the customer's needs.

As an initial matter, the agency represents that the overall F-15 fleet modernization program has been delayed and, as a consequence, there is no current need for the base year contemplated by the solicitation. Specifically, the Air Force represents that aircraft deliveries have been delayed from December 2014 until July 2017 due to technical issues, thus also delaying the need for delivery of the vehicles and trailers covered by the TSS RFP. See AR, Tab 18, Air Force Talking Paper on TSS Engagement, at 1; Tab 25, Memo. to Acting Commander, RSAF (Dec. 1, 2015), at 1; COSF (Apr. 1, 2016), at 5. SupplyCore did not rebut this justification for the cancellation.

Next, the Air Force identifies three reductions to the RFP's required services. First, the agency represents that the requirement under PWS ¶ 4.4, Vehicles and Trailers, to prepare each item for service prior to delivery is no longer required. RFP, PWS, at 328. The Air Force explains that the requirement was included in the RFP when the agency anticipated that vehicles and trailers would have to be procured outside of and imported into Saudi Arabia. AR, Tab 15, Air Force Memo. to File (Feb. 3,

2016), at 1. The agency subsequently determined that all of the required items can be procured in-country, thus eliminating the need for the contractor to prepare the supplies for use after import. Id. Furthermore, the Air Force determined that preparing the items for use prior to delivery was a requirement of the supplier, not an independent service requirement. Id. SupplyCore did not rebut the agency's position that these services are not required.

Second, the Air Force represents that the local purchase requirements of PWS ¶ 4.6 are no longer required. As explained by the agency, these requirements are duplicative of efforts currently being performed under three other existing F-15 Foreign Military Sales contracts. Id.³ We have previously recognized that avoiding procuring duplicative services may reasonably support a decision to cancel a solicitation. See, e.g., Brian X. Scott, B-401960, Nov. 9, 2009, 2009 CPD ¶ 228 at 3; Williams College, B-259351, Mar. 23, 1994, 95-1 CPD ¶ 162 at 3.

Third, the Air Force represents that PWS ¶ 4.8, Warranty, and ¶ 4.15, EDE, are no longer required. Under PWS ¶ 4.8, the contractor was to administer manufacturer warranties for the RSAF. RFP, PWS, at 328. The agency represents that the RSAF has subsequently purchased proprietary software to manage warranties on its own behalf, and, therefore, rendering this service unnecessary. See AR, Tab 23, F-15SA Conversion Section Chief Decl. (Mar. 30, 2016), at 2. Under PWS ¶ 4.15, the contractor was to provide electronic transportation and delivery tracking information. RFP, PWS, at 332. The Air Force explains that the requirement was included when it was believed that items would have to be procured outside of and imported into Saudi Arabia; however, as addressed above, the agency subsequently determined that all required items could be purchased in-country. AR, Tab 15, Air Force Memo. to File (Feb. 3, 2016), at 2; COSF (Apr. 1, 2016) at 8. Additionally, the proprietary software that the RSAF separately purchased for warranty administration also will be used for tracking transportation and delivery information, and, therefore, this service is no longer required. AR, Tab 15, Air Force Memo. to File (Feb. 3, 2016), at 2; COSF (Apr. 1, 2016) at 8.

³ The Air Force further represents that the local purchase requirements are also included in a pending solicitation that consolidates the three above-referenced contracts. AR, Tab 15, Air Force Memo. to File (Feb. 3, 2016), at 1; COSF (Apr. 1, 2016), at 7. SupplyCore argues that the agency cannot reasonably argue that cancellation of the TSS RFP is appropriate based on the alleged duplication of effort created by the agency in a subsequently-issued solicitation. See SupplyCore's Comments (Apr. 14, 2016) at 5-6. Even accepting the protester's premise that an agency cannot subsequently change procurement methods, the protester ignores that the new solicitation is merely a follow-on contract to current contracts already including the duplicative requirements.

SupplyCore argues that these reductions cannot provide a reasonable basis for canceling the RFP because the RSAF's purchase of the software "certainly was known" prior to the previous awards to the protester. SupplyCore's Comments (Apr. 14, 2016) at 5. We do not find this argument persuasive. As addressed above, an agency may generally cancel a solicitation no matter when the information precipitating the cancellation first arises. MetroStar Sys., Inc., supra. While a delay in removing the unnecessary services is unfortunate, it does not undermine the reasonableness of the cancellation.

Finally, the Air Force also explains that, in the almost three years since the initial issuance of the RFP, dozens of changes to the required supplies are necessary, including revising national stock numbers (NSNs), changing specifications, substituting new requirements for obsolete supplies, and making configuration changes. AR, Tab 16, Memo. to RSAF (Feb. 20, 2016), at 1; Tab 19, Memo. to RSAF (Mar. 17, 2016), at 1-7. The Air Force determined that many of these changes could have an impact on the procurement method and price. AR, Tab 19, Memo. to RSAF (Mar. 17, 2016), at 1; COSF (Apr. 1, 2016), at 9. SupplyCore argues that the majority of the changes are administrative in nature (e.g., changes to the NSNs) or otherwise are minor (e.g., changes to paint colors). See SupplyCore's Comments (Apr. 14, 2016) at 6-7. We note, however, that several of the changes appear to be more significant. See, e.g., AR, Tab 16, Memo. to RSAF (Feb. 20, 2016), at 1 (replacing a no longer available [DELETED] with a [DELETED]); Tab 19, Memo. to RSAF (Mar. 17, 2016), at 5 (including, among other changes: (1) amending a NSN to accurately reflect the need for a [DELETED], not [DELETED]; and (2) replacing a [DELETED] for an obsolete [DELETED]). In light of the totality of the changes to the required supplies, we find that the Air Force reasonably concluded that the cumulative changes were material and warranted conducting a new competition based on the revised specifications.

In conclusion, we find that the Air Force's decision to cancel the solicitation was reasonable. As a general rule, where, as here, an agency discovers that its requirements have materially changed, such that the solicitation no longer reflects the agency's actual requirements, the appropriate course of action is for the agency to cancel the original solicitation and issue a new one (or amend the original solicitation) to reflect the agency's actual requirements, and make a new selection decision. Business Computer Applications, Inc., B-406230.3, May 16, 2012, 2012 CPD ¶ 159 at 3. Here, the aggregate program delays, reductions in anticipated service requirements, and changes to the required supplies provide a reasonable basis for canceling the RFP and the protester's general allegations of pretext are unsupported.

The protest is denied.

Susan A. Poling
General Counsel