



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Integrity National Corporation

File: B-411582

Date: September 1, 2015

Ruth E. Ganister, Esq., Rosenthal and Ganister, LLC, for the protester.
David W. Altieri, Esq., Department of Veterans Affairs, for the agency.
Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of the cancellation of a solicitation is denied where the agency reasonably concluded that the solicitation inaccurately stated the requirement, and where the agency decided to consider whether to set the procurement aside for award under the AbilityOne program.

DECISION

Integrity National Corporation, of Rockville, Maryland, a small business, protests the cancellation of request for quotations (RFQ) No. VA245-15-Q-0132, which was issued by the Department of Veterans Affairs (VA) for cleaning and janitorial services for the Washington, D.C. Veterans Affairs Medical Center (DCVAMC).

We deny the protest.

BACKGROUND

The RFQ was issued on April 24, 2015, and provided for the award of a fixed-price contract for cleaning and janitorial services for the DCVAMC for a 1-year base period and four 1-year options. The procurement was conducted via the General Services Administration (GSA) e-Buy portal, under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4 and was open to vendors holding FSS contracts. Contracting Officer Statement at 1. The solicitation required the contractor to provide “all labor, supervision, management support, and equipment, supplies, consumables, and materials to facilitate cleaning of treatment areas, administrative support offices, and Canteen.” RFQ, Statement of Work (SOW) at 5. The RFQ stated the total approximate square footage to be

cleaned under this contract was estimated to be 1,107,594.95 gross square feet. Id. The contracting officer states that the vendors were advised in the RFQ that award would be made on a lowest-priced, technically acceptable basis.¹ Contracting Officer Statement at 1.

The VA conducted a site visit for vendors. Prior to the close of the solicitation, several vendors submitted questions and requests for clarification, including the following:

11. What are the square footage totals of the clinic spaces, hallways and canteen?

[answer] will be provided during walk thru

Agency Supp. Filing, Questions and Answers, at 3.

Ten vendors submitted quotes by the May 5 deadline. Contracting Officer Statement at 1. The agency concluded that Integrity had submitted the lowest-priced, technically-acceptable quote, and made award to that vendor on May 13. Id.

On May 15, two unsuccessful vendors filed agency-level protests contesting the award. Id. UNITED Facility Services Corp., doing business as EASTCO, alleged that the statement of work and the site visit were misleading with regard to the amount of square footage required, and the responsibilities of the contractor. Agency Report (AR), Tab 5, Agency-Level Protest of EASTCO (May 19, 2015), at 1. In addition, EASTCO asserted that the usage of supplies and equipment was not properly spelled out in the RFP or at the site visit. Id. The second agency-level protest, which was filed by ADS-Meyers, Inc., argued that the solicitation was defective regarding the scope of work and the square footage of the areas to be cleaned, and that the site visit did not include “all [of] the areas in the Scope of Work that the bidder would be responsible for cleaning, and/or buildings listed in the

¹ We note however that the RFQ did not clearly state the basis for award, and instead stated the following:

The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

Technical and past performance

RFQ at 55.

solicitation.” AR, Tab 6, Agency-Level Protest of ADS-Meyers, Inc. (May 19, 2015), at 1. In this regard, ADS contended that the individual conducting the site visit “was unsure of all [] the bid requirements.” Id.

In response to the agency-level protests, the contracting officer reviewed the solicitation, and determined that the protests were “essentially correct.” Contracting Officer Statement at 1. The contracting officer concluded that the “solicitation must be cancelled in order to take appropriate corrective action, such as re-assessment of the requirement, correct deficiencies in the scope of work, and exploration of procurement of the services under FAR Subpart 8.7.” Id. The contracting officer decided to take corrective action and cancel the solicitation. Id. This protest, challenging the cancellation, followed.

In response to Integrity’s protest, the agency report, and the protester’s comments, our Office held a conference call with the parties in which our Office asked the agency to provide additional details “regarding its basis for cancelling the RFQ.” Email from GAO to Integrity and VA (Aug. 25, 2015). In its supplemental submission to our Office, the agency explained that “it was determined [that] these services should have [gone] to [an] AbilityOne [firm].” Supp. Contracting Officer Statement at 1. The agency also noted that the square footage listed in the RFQ was inaccurate, as the square footage was stated in “gross” terms, rather than “net” terms. Id. The agency contends that this error in the solicitation regarding the area to be cleaned under this contract was compounded during the site visit where “potential contractors had not been shown the complete areas of the requirement.” Id.

DISCUSSION

Integrity argues that the VA’s cancellation was improper because it was in response to two untimely agency-level protests. The protester also contends that the agency-level protests lacked merit because to the extent there were any questions regarding the square footage of the area to be cleaned under this RFQ, they were addressed in the Questions & Answers. Protester’s Comments (July 9, 2015) at 3. For the reasons discussed below, we find no basis to sustain the protest.

As a general rule, in a negotiated procurement the contracting agency need only demonstrate a reasonable basis to cancel a solicitation after receipt of proposals, as opposed to the “compelling reason” required to cancel an IFB after bids have been opened. See FAR § 14.404-1(a)(1); VIRE Consulting, Inc., B-408148.2, Nov. 26, 2013, 2013 CPD ¶ 272 at 3; CFM Equip. Co.--Recon., B-251344.2, Aug. 30, 1993, 93-2 CPD ¶ 134 at 3. The standards differ because, in procurements using sealed bids, competitive positions are exposed as a result of the public opening of bids, while in negotiated procurements there is no public opening. CFM Equip. Co.--Recon., supra. Additionally, our Office has stated that cancellation of a solicitation other than an IFB is proper, even after one or more of the offerors’ prices have been

revealed, where the agency has a reasonable basis to cancel, and the record contains plausible evidence or a reasonable possibility that a decision not to cancel the solicitation would be prejudicial to the government or the integrity of the procurement system. See Noelke GmbH, B-278324.2, Feb. 9, 1998, 98-1 CPD ¶ 46 at 3-4.

Here, we find that the VA had a reasonable basis to cancel the RFQ. The record shows that the agency is considering whether the cleaning and janitorial services required under the solicitation should have been procured from an AbilityOne vendor.² Supp. Contracting Officer Statement at 1. Although it is not clear whether this rationale was part of the agency's initial decision to cancel the solicitation, our Office has held that a new or additional rationale justifying the cancellation of a solicitation provided by an agency during the development of a protest is reasonable so long as it would have supported cancellation had it been advanced originally. TaxSlayer, LLC, B-411101, May 8, 2015, 2015 CPD ¶ 156 at 9.

Additionally, the contracting officer states that the cancellation of the RFQ was reasonable because vendors were misled by inaccurate information in the solicitation regarding the square footage required to be cleaned by the vendor. Supp. Contracting Officer Statement at 1. As stated above, the RFQ listed the square footage in "gross" terms, instead of "net." The contracting officer states that the required square footage should have been listed in "net" terms in order for the vendors to accurately quote the requirements. Supp. Contracting Officer Statement at 1. Contrary to the protester's contention, the contracting officer notes that this issue was not resolved by the site visit, as the vendors were not "shown the complete areas of the requirement." Id.

Finally, to the extent that the protester contends that the agency's action in cancelling the solicitation was unreasonable because it was responding to untimely agency-level protests, our Office has consistently held that agencies may take

² AbilityOne is a program initiative that provides employment opportunities for people who are blind or have other significant disabilities. See Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. §§ 8501-8506. The JWOD Act provides that federal agencies shall procure items on the procurement list from an AbilityOne organization, absent certain circumstances not relevant here. See 41 U.S.C. § 8504; see also Alternative Contracting Enters., LLC, Pierce First Med., B-406265 et al., Mar. 26, 2012, 2012 CPD ¶ 124, recon. denied B-406291.3, B-406291.4, June 13, 2012, 2012 CPD ¶ 182 (holding that the VA appropriately issued a sole-source purchase order to an AbilityOne nonprofit vendor for items on the AbilityOne procurement list, even though service-disabled, veteran-owned small business (SDVOSB) concerns indicated that they could provide the items).

corrective action in response to issues that were not raised in a protest, or in response to untimely protest issues, even if that is not until after proposals are submitted and the protester has incurred costs. See Optimum Mgmt. Sys., LLC, B-299322.2, May 23, 2007, 2007 CPD ¶ 106 at 3; Jones Lang LaSalle Americas, Inc., B-406019.2, Feb. 14, 2012, 2012 CPD ¶ 98 at 4; Admiral Towing & Barge Co., B-245600, B-245602, Jan. 16, 1992, 92-1 CPD ¶ 83 at 6. Here, we note that the record contains evidence that the integrity of the procurement system would be prejudiced if the RFQ were not cancelled. The agency has stated that “[i]f the solicitation had not been cancelled, the unfair environment would have tainted the integrity of the procurement and the VA would not have contracted for the services needed.” Supp. Contracting Officer Statement at 1.

The protest is denied.

Susan A. Poling
General Counsel