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Decision

Matter of: Computer World Services Corporation

File: B-416042

Date: May 22, 2018

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DIGEST

Protest that agency improperly cancelled the solicitation is denied where the agency reasonably determined that the solicitation’s statement of work no longer met its needs.

DECISION

Computer World Services Corp. (CWSC) of Washington, DC, protests the cancellation of request for proposals (RFP) No. 191NLE18R0001 issued by the Department of State (DOS), for biometric expertise services. The protester argues that the agency’s decision to cancel the solicitation lacks a reasonable basis and was a pretext to avoid awarding the contract to CWSC.

We deny the protest.

BACKGROUND

On November 10, 2017, the Department of State issued the solicitation as a set-aside for historically underutilized business zone (HUBZone) small businesses. Contracting Officer Statement (COS) at 1; Agency Report (AR), Tab 3, RFP, at 2. The RFP contemplated the award of a fixed-price contract with a 1-year base period and two 1-year options. RFP at 21-22. Proposals were to be evaluated based on the following factors: (1) technical/past performance; (2) key personnel; and (3) price. Id. at 23-24. The evaluation factors were listed in descending order of importance, and non-price factors, when combined, were more important than price. Id. at 23.

The solicitation sought to obtain biometric expertise services to guide the planning, documentation, development, testing, operations and maintenance of applications,

reporting, and other advanced initiatives for a biometric data sharing program.¹ Id. at 3. The solicitation also contemplated that the awardee would help the agency transition to a cloud based system for development and testing of biometric software modules. Id. Moreover, the solicitation was supposed to provide the agency with the ability to maintain pace with advanced technologies to include cloud services and mobile capabilities. Id.

DOS received seven proposals in response to the solicitation and evaluated the offers between November 30, 2017 and January 5, 2018. COS at 1. On February 8, 2018, after multiple discussions between the agency's contracting personnel and program staff, DOS concluded that the solicitation, as written, did not fully reflect its needs. Id. The agency believed that it was necessary to cancel the solicitation for the following reasons: (1) the RFP did not address requirements to accomplish basic cloud planning, hosting, migration and general support; (2) the RFP failed to include a requirement for code development within cloud infrastructure; (3) the quantity and type of personnel required by the solicitation were insufficient to accomplish the necessary work; and (4) multiple aspects of the existing solicitation were no longer required by the agency. Id. at 1-2.

On February 8, 2018, the agency posted notification of its decision to cancel the solicitation on the Federal Business Opportunities (FedBizOpps) website. Id. at 2. The agency also provided e-mail notification of its decision to cancel to all seven offerors. Id. On February 14, CWSC filed the instant protest.

DISCUSSION

The protester contends that it was unreasonable for the agency to cancel the solicitation. CWSC asserts that the agency's decision to cancel the RFP is a pretext to avoid awarding a contract to the protester. In support of this assertion, CWSC challenges each of the reasons DOS used to justify its decision to cancel. Additionally, the protester argues that the RFP was cancelled only after CWSC challenged DOS's decision to exclude CWSC from the competition, and that this provides further evidence of pretext. Finally, the protester contends that our Office should give little weight to the agency's rationale for cancelling the solicitation because of DOS's failure to contemporaneously document its justification.

In a negotiated procurement, such as this one, an agency has broad authority to decide whether to cancel a solicitation, and to do so, need only establish a reasonable basis. VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6. Thus, we have consistently explained that an agency need only establish a reasonable basis to support

¹ These services under the RFP were being procured to support the goals of the Merida Initiative. RFP at 3. The Merida Initiative is a partnership between the United States and Mexico to fight organized crime and associated violence, "while furthering respect for human rights and the rule of law." Id.

a decision to cancel a solicitation. See, e.g., AeroSage LLC, B-410648.2, B-410648.3, Mar. 20, 2015, 2015 CPD ¶ 111 at 3. A reasonable basis to cancel exists when, for example, an agency concludes that a solicitation does not accurately reflect its needs. WKF Friedman Enters., B-409892.2, Sept. 25, 2014, 2014 CPD ¶ 282 at 2. Moreover, an agency may properly cancel a solicitation regardless of when the information precipitating the cancellation first surfaces or should have been known. Daston Corp., B-292583, B-292583.2, Oct. 20, 2003, 2003 CPD ¶ 193 at 3.

Where, as here, a protester has alleged that the agency's rationale for cancellation is but a pretext--that 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 reasonableness of the agency's actions in canceling the acquisition. Inalab Consulting, Inc.; Solutions by Design II, LLC, B-413044 et al., Aug. 4, 2016, 2016 CPD ¶ 195 at 7; Miller, Davis, Marter & Oppen, P.C., B-242933.2, Aug. 8, 1991, 91-2 CPD ¶ 176 at 4. Notwithstanding such closer scrutiny, and even if it can be shown that pretext may have supplied at least part of the motivation to cancel the procurement, the reasonableness standard applicable to cancellation of a solicitation remains unchanged. See Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 4.

Our review of the record provides no basis to sustain CWSC's protest. Here, the agency reasonably determined that the solicitation, as issued, no longer met its needs. In this regard, following multiple discussions between personnel from the DOS contracting office and the program office in Mexico City, the agency decided to cancel the solicitation once it "realized it needed a new requirement that would increase the scope of the SOW [statement of work]." COS at 3. The agency arrived at this conclusion after reviewing the RFP and realizing that approximately 80 percent of the work in the RFP was no longer applicable to the agency's current requirement. Program Office's Supplemental Statement (POSS) at 2. For example, the agency determined that it now needed the addition of over 140 functional requirements of software development, which were critical to the completion of the biometric data exchange cloud infrastructure. COS at 3; AR, Tab 5, Program Office's Statement (POS), at 1.

DOS concluded that in order to meet the additional requirements that were identified, the solicitation would have to be amended to include tasks associated with the generation of administrative tools, reporting and analytical capabilities, and a web-based application for data aggregation. AR, Tab 5, POS, at 1. Furthermore, the agency concluded that due to the additional work required, changes would also need to be made to the key personnel requirements identified in the RFP. Id. at 1-2. Finally, DOS also determined that it would be necessary to remove certain tasks from the solicitation's statement of work because those tasks were no longer needed. Id. Ultimately, the contracting officer determined that awarding a contract based on the outdated solicitation "would have resulted in the government paying for, and receiving, a project that did not meet the government's needs." COS at 3.

In response, the protester argues that the new tasks identified by the agency could have been reasonably encompassed by the existing RFP. Comments at 4. For example, CWSC asserted that “nothing in the [s]olicitation indicates that the efforts anticipated were limited to ‘basic’ cloud planning support.” Id. The protester also challenged the agency’s assertion that changes to the solicitation’s personnel requirements were necessary because the solicitation allowed for “personnel beyond the three specific key personnel required to the extent necessary to fulfill the needs of the [s]olicitation.” Id. at 5.

Although the protester disagrees with the agency’s assessment of its own requirements, CWSC has not demonstrated that the agency’s decision to cancel was unreasonable. A protester’s disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them does not establish that the agency’s judgment is unreasonable. See Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4. Additionally, the agency has expressed legitimate concerns with the RFP’s requirements as previously written. The fact that CWSC interprets the requirements of the DOS solicitation differently than the agency does not provide our Office with a basis to question the cancellation. See Starry Assocs., Inc., B-410968.3, Dec. 23, 2015, 2015 CPD ¶ 401 at 6.

The protester also argues that the agency cancelled the solicitation because DOS wanted to avoid awarding a contract to CWSC. CWSC contends that this pretext is demonstrated by the agency’s decision to cancel the solicitation only after it challenged the agency’s conclusion that CWSC “was ‘ineligible for consideration for award’ because [CWSC] was no longer small.” Protest at 5. In support of this assertion, the protester points to an email exchange between an attorney representing CWSC and a DOS contract specialist dated February 8, 2018, which was the same day the agency cancelled the solicitation. In that email exchange, the protester argued that DOS could not eliminate CWSC from award consideration without first coordinating with the Small Business Administration (SBA) to obtain a formal size determination. CWSC alleges that the email exchange and the timing of the cancellation provide evidence to support the notion that the agency’s cancellation decision was merely a pretext to avoid awarding the contract to CWSC and to avoid obtaining a formal SBA size determination.

As previously discussed, we find the agency’s proffered rationale for the cancellation to be reasonable. Furthermore, even if we were to assume that there may have been some personal animus or bias towards CWSC on the part of some agency personnel, which we do not, such animus or bias does not provide a basis to conclude that the cancellation was improper, where, as here, the cancellation was otherwise reasonably justified. See Dr. Robert J. Telepak, B-247681, June 29, 1992, 92-2 CPD ¶ 4 at 4. (“[I]t was proper for the agency to cancel the RFP, notwithstanding that animus, if no need existed for the services covered by the RFP.”).

Finally, CWSC alleges that because there are no contemporaneous records documenting the agency’s rationale for cancelling the solicitation, little weight should be given to the post-hoc explanation produced by DOS in response to the protest. In

reviewing an agency's evaluation, our Office will not limit its review to contemporaneously documented evidence, but instead will consider all the information provided, including a party's arguments and explanations.² See Serco, Inc., B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 7. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review as long as those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.

Here, the statements submitted by the contracting officer, the contract specialist, and the program office, are post-protest explanations which provide previously unrecorded details explaining the agency's rationale for its decision to cancel the RFP. For example, DOS contracting and program personnel represent that they met on January 22, 2018, to discuss the procurement. AR, Tab 5, POS, at 1; Contract Specialist Supplemental Statement (CSSS) at 1; POSS at 1. At that meeting, agency personnel discussed the shortcomings that existed in the cancelled RFP. AR, Tab 5, POS, at 1-2; CSSS at 1. Moreover, the explanations provided by the agency do not pertain to reevaluations, but rather simply fill in previously unrecorded details with regard to the basis for the agency's decision to cancel the solicitation. AR, Tab 5, POS, at 1-2; COS at 1-3; CSSS at 1-2; POSS at 1. Based on our review, the explanations provided by the agency for its basis to cancel the solicitation are credible. NWT, Inc.; PharmChem Labs., Inc., supra.

The protest is denied.

Thomas H. Armstrong
General Counsel

² DOS personnel represented that there are no contemporaneous documents with regard to the agency's decision to cancel the protested solicitation. CSSS at 1-2; POSS at 1.