



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Atlantic Scientific & Technology Corporation

File: B-276334.2

Date: October 27, 1997

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DIGEST

Protester's request that General Accounting Office recommend reimbursement of proposal preparation costs and bid protest costs (incurred in pursuing a contract under a solicitation which it alleges was issued with the intent to make award only if award could be made to a particular firm) is denied where the protester has made no showing of bad faith on the part of the government and where the contracting agency's decision not to resolicit the requirements, after having canceled the prior award in response to a protest, was not improper.

DECISION

Atlantic Scientific & Technology Corporation (AS&T) protests the Department of the Navy's decision not to resolicit requirements which had been set forth under request for proposals (RFP) No. N00421-96-R-5177. The Navy canceled this solicitation as part of its corrective action taken in response to an earlier protest filed by AS&T. After being advised that the Navy had reassessed its needs and determined that no additional contractor support services would be needed in the near term, AS&T filed the instant protest arguing that the procurement was a "sham" from its inception.

We deny the protest.

The RFP was issued on October 21, 1996, for systems engineering and technical assistance services in support of the Navy's P-3 VP Special Projects Program (which includes two P-3 Orion Aircraft Patrol Squadrons). The solicitation set forth three general tasks: imagery research and development, telecommunications connectivity, and operational/maintenance planning. The annual estimated level of effort was 6,000 hours for six labor categories, and the government estimated the total value of the 5-year contract at approximately \$2.8 million.

Two firms submitted proposals, AS&T and Newlink Corporation. Newlink's proposal was evaluated as representing the best value to the government, and award was made to the firm on February 11, 1997. At its debriefing, AS&T raised three allegations which were repeated in its February 26 protest to this Office: (1) Newlink was ineligible for award as a result of an organizational conflict of interest because one of its employees allegedly assisted in preparing the solicitation's statement of work (SOW); (2) Newlink and the Navy violated procurement integrity rules because the Navy allegedly disclosed AS&T's price to Newlink; and (3) the Navy's source selection decision was flawed because the proposed contract's program manager, Mr. John Rastatter, allegedly pressured the source selection panel to make award to Newlink.

The Navy investigated these allegations while preparing the agency report in response to AS&T's protest. One week before the agency report was due, the Navy advised that its investigation had been completed and that the contracting officer had determined that a Newlink employee had assisted in preparing the solicitation's SOW. As to the remaining allegations, the contracting officer found that, although it appeared that government personnel outside of the evaluation process learned of a price difference in the proposals, AS&T's allegation regarding the release of its pricing information to Newlink was uncorroborated. The contracting officer could not substantiate AS&T's allegation that the source selection board was pressured by Mr. Rastatter into recommending award to Newlink, but determined that Mr. Rastatter's impatient attitude and apparent preference for Newlink were improper.

The Navy concluded that it would not be prudent to continue with the acquisition and proposed to terminate Newlink's contract for convenience; cancel the solicitation; review the agency's requirements and draft a new SOW; issue a new solicitation; and remove Mr. Rastatter from any role in the reprocurement. In view of the proposed corrective action, our Office dismissed AS&T's protest as academic on March 25.

Newlink's contract was terminated for convenience the next day. Since drafting a new SOW and beginning a new competitive procurement are time-consuming processes, and since the requiring activity was pressuring the Navy for completion of work encompassed by at least one of the tasks in the prior solicitation, the Navy attempted to issue two sole-source simplified acquisition procedure actions for the immediate work at issue, one to Newlink and one to AS&T. The sole-source action to Newlink was synopsisized in the Commerce Business Daily on April 24 while the documents for the sole-source action to AS&T were being prepared. AS&T objected to both of these actions in late April, complaining that the work should be incorporated in a competitive resolicitation of the requirements as indicated by the Navy's prior proposed corrective action.

On May 6, the project engineer asked the contract specialist to cancel the sole-source request for Newlink as its engineering expertise was no longer required. The contracting officer was advised that the new director of the Special Programs Division, Captain Eric Arrowood, had concluded that the revised requirement could be performed in-house. Newlink and AS&T were advised that the requirements under the canceled solicitation had been reviewed and that no additional contractor support services would be needed in the near term; this protest followed.

AS&T alleges that the Navy did not need these requirements; that Mr. Rastatter initiated the solicitation solely to provide Newlink with a contract vehicle; and that the "evaporation" of the requirements after the "Rastatter-Newlink connection" was broken shows that the procurement was a sham from its inception. As relief, AS&T requests payment of the proposal preparation costs and protest costs it expended in an effort to secure a contract which, AS&T asserts, the agency planned to award only if it could do so to Newlink. AS&T alternatively argues that, to the extent the need for these requirements exists, it could have been filled by awarding AS&T the contract under the prior solicitation or by resoliciting the requirements.

A prerequisite to our Office's recommending reimbursement of proposal preparation costs and bid protest costs based on an allegation that the agency solicited proposals knowing it would only make award if it could do so to a particular offeror is a showing that the government acted in bad faith in issuing the solicitation. See Restorations Unlimited, Inc. et al., B-221862, May 28, 1986, 86-1 CPD ¶ 493 at 4, aff'd, B-221862.2, July 11, 1986, 86-2 CPD ¶ 57 at 2; Computer Resource Tech. Corp., B-218292.2, July 2, 1985, 85-2 CPD ¶ 14 at 2. There is no such showing here.

As an initial matter, AS&T's allegation that the procurement was a sham from its inception relies upon the assertions it made during the prior protest concerning Mr. Rastatter. However, the statements from the individuals named in the prior protest, obtained as a result of the Navy's investigation, do not support this allegation. Instead, they confirm the Navy's position that Mr. Rastatter was impatient and exhibited an improper preference for Newlink. In response to AS&T's allegation that the Navy did not need these requirements, Mr. Francis Chamberlain, the project engineer under the prior solicitation until he replaced Mr. Rastatter as the project manager, specifically states that the original requirements were real at the time of award and real through May.

AS&T points to the cancellation of the RFP and the decision not to resolicit as further support for its contention that the agency issued the RFP in bad faith, since AS&T alleges that the Navy had no intention of making award to any offeror except Newlink. Our Office conducted a fact-finding hearing to ascertain the reasons for and circumstances surrounding the Navy's decision not to resolicit the requirements contemplated under the canceled solicitation. Our review of the entire record, including the hearing testimony, provides us with no basis to conclude that the

Navy's decision supports AS&T's allegation that the procurement was a sham from its inception.

Captain Arrowood assumed his new position in early May and immediately reviewed the Special Program Division's requirements. Hearing Video Transcript (VT) 10:49:50. One of these requirements concerned the data connections between aircraft, ground stations, and the joint broadcast system (JBS). In short, aircraft observing targets at sea and ashore transmit their data to ground stations, and these transmissions need to be sent from ground stations to the JBS for worldwide dissemination of the information. The aircraft operate in a UNIX environment, and the Navy anticipated converting the JBS work to the same UNIX environment. VT 10:56:55. The project manager, Mr. Chamberlain, testified that this requirement was work encompassed under the second task of the canceled solicitation and that it constituted a significant portion of the effort. VT 11:13:20; 35:00; 37:11-37:48. Mr. Chamberlain further testified that the Navy did not have in-house UNIX capability. VT 12:24:08-24:20.

In his previous assignment, Captain Arrowood had encountered technical issues similar to those posed by this requirement because his former office built the JBS network in Europe and he had become familiar with the government agencies and engineers that had done this type of work. VT 10:51:00-10:55:35. In contrast, Captain Arrowood testified that his predecessor did not understand JBS connectivity very well and did not understand what government resources were already available to perform the work. VT 10:58:55-59:15; 11:26:40.

Captain Arrowood's knowledge of the JBS led him to conclude that the conversion of the JBS work to a UNIX environment was not necessary because another operating system was preferable. VT 10:57:45; 11:24:20. Since this aspect of the work was no longer needed, a substantial portion of the funding was redirected to another, unrelated effort. VT 11:02:10-03:00. Some JBS connectivity work was still urgently needed, but Captain Arrowood's familiarity with this type of work and the resources available to perform it led him to determine that the government already had the resources available to complete this work, both in-house and through some existing contract vehicles. VT 10:57:45-58:40. In this regard, the subcontractor that had been proposed by AS&T under the canceled solicitation was given approximately \$20,000 worth of work under an existing contract to perform tasks related to those contemplated under the original solicitation. VT 11:59:10-59:15. As to the remainder of the work encompassed under the original solicitation, Mr. Chamberlain testified that the work under the first task--research and development work concerning digital camera technology--will be done either in-house or under new contracts in the future, VT 12:15:28-18:03, and that the work under the third task--training and documentation related principally to the JBS connectivity work--will be completed in the future either in-house or through existing contract vehicles. VT 11:37:54-11:40:00; 12:16:45-45:52.

AS&T's assertion that even Captain Arrowood did not understand why there was a contract here, VT 11:13:31, overlooks the fact that Captain Arrowood apparently approached these requirements with the benefit of substantially greater knowledge than did his predecessor. This fact does not, however, mean that the Navy acted in bad faith by issuing this solicitation, see Honeywell Info. Sys., Inc.--Recon., B-193177.2, Jan. 19, 1981, 81-1 CPD ¶ 26 at 5, or entitle AS&T to recover its proposal preparation and protest costs. Restorations Unlimited, Inc. et al., supra. In view of the Navy's explanations of the events at issue here, and in the absence of any objective evidence to the contrary, AS&T's allegation that this was a sham procurement is not supported. See Science Applications, Inc., B-197099, May 20, 1980, 80-1 CPD ¶ 348 at 16.

Instead, the record shows that the Navy's assessment of its needs in this area changed and that the agency determined that its best interests were not served by resoliciting the requirements set forth in the canceled solicitation in the near term. We have found no evidence that this determination was unreasonable; instead, we view it as similar to the cancellation of a negotiated procurement, which is justified where an agency determines that it is not in the government's best interest to proceed with a particular procurement. See Federal Acquisition Regulation § 15.608(b)(4); Waste Management Envtl. Servs., Inc., B-252553, July 12, 1993, 93-2 CPD ¶ 14 at 5 (cancellation was proper where government's needs substantially changed). Moreover, as a general rule, our Office does not review agency decisions to cancel procurements and instead perform the work in-house, since such decisions are a matter of executive branch policy. Mastery Learning Sys., B-258277.2, Jan. 27, 1995, 95-1 CPD ¶ 54 at 2.

AS&T alternatively argues that some of the needs expressed under the original solicitation remain and could have been satisfied by awarding the original contract to AS&T since the subcontractor it had proposed performed some of the work, or by resoliciting. While the Navy could have pursued one of those options, it was not required to do so, given the different technical approach it took to its requirements, which resulted in a substantially diminished need to meet these requirements through a new contract vehicle. We note in this regard that the Navy indicates that it will have some need in the future for the imagery research and development support and may solicit for those needs. VT 12:16:45-16:52.

Since AS&T has made no showing that the agency originally issued the solicitation in bad faith, or that its decision not to resolicit was improper, the protester's proposal preparation costs and bid protest costs are not recoverable. Asbestos Abatement of Am., Inc., B-221891, B-221892, May 7, 1986, 86-1 CPD ¶ 441 at 7-8.

The protest is denied.

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