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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: IT Corporation

File: B-289517.3

Date: July 10, 2002

Richard L. Moorhouse, Esq., and Dorn C. McGrath III, Esq., ReedSmith, for the protester.

Clare A. Kersten, Esq., and Robert E. Little, Jr., Esq., Department of the Navy, for the agency.

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DIGEST

Agency's decision to cancel a solicitation used to obtain and evaluate private-sector proposals in conducting a Circular A-76 cost comparison, after submission of proposals and announcement of intent to award a contract under the solicitation to the protester based on the cost comparison results, is reasonable where the solicitation did not address material requirements; inadequate information was provided to the private-sector offerors, which did not fairly allow them to prepare their proposals; and at least one private-sector firm did not submit a proposal because of the inadequacy of the information in the solicitation.

DECISION

IT Corporation protests the decision by the Department of the Navy, Naval Facilities Engineering Command, to cancel request for proposals (RFP) No. N68711-99-R-6670, which sought proposals to provide base operation support services at Marine Corps Base Camp Pendleton, California. Alternatively, the protester requests reimbursement of its proposal preparation costs.

We deny the protest and claim for costs.

The Navy issued the RFP on October 12, 2000 in conjunction with commercial activities studies pursuant to Office of Management and Budget (OMB) Circular A-76. The RFP contemplated the award of a fixed-price/indefinite-quantity contract for a base period of 1 year with 4 option years and 2 award-term years. The RFP

allowed for use of a cost/technical tradeoff to select the private-sector proposal to be compared with the in-house plan.

Prior to submitting proposals, private-sector offerors submitted statements of qualification (SOQ) to perform the contract requirements. Four firms submitted SOQs, and the agency determined that all four were viable competitors. Subsequently, two firms withdrew from the competition. The two remaining firms, IT and Del-Jen, Inc., submitted proposals. The agency evaluated IT's proposal as representing the best value private-sector proposal, compared it against the government's in-house management plan for a most efficient organization (MEO), and determined that IT's proposal represented a significant savings over the MEO. IT's proposed price was \$124 million, which was about 40 percent lower than Del-Jen's price and nearly 50 percent lower than the cost of the MEO. On November 28, 2001, the agency announced its decision to award a contract to IT under the RFP.

On December 10, Del-Jen protested the agency's evaluation of the private-sector proposals to our Office. Essentially, Del-Jen alleged that, as evidenced by the extremely low price of IT's proposal, the agency's technical and price evaluations were inadequate and unreasonable. In response to Del-Jen's protest, the agency proposed corrective action that included a review of the evaluations, as well as a review of the adequacy of the performance work statement (PWS) included in the RFP. Agency Report, Tab 6, Recommendation for Corrective Action. The agency's corrective action contemplated the possibility of amending or canceling the RFP, should the review show that the PWS was inadequate. *Id.* at 2. Our Office dismissed Del-Jen's protest as academic following notice of the agency's corrective action.

The agency undertook extensive reviews of the PWS and other information that was available to offerors. Separate reviews were conducted by the technical evaluation board and by an independent staff member within the agency. Following these reviews, the agency determined that the information available to offerors did not adequately identify all of the work required to meet the agency's basic needs. The historical workload information disclosed to the offerors was found to be incomplete and misleading, and no definitions or parameters were identified for crucial work and elements of the contract. The workload data in the agency's MAXIMO computerized database that was available to offerors lacked details that were available to the MEO team, such as the length of service calls, the location of work, and the mix of trades used to perform the work. As a result of the foregoing, offerors had to make substantial assumptions about the work in order to prepare their proposals, which resulted in their being based on significantly different assumptions, and thus substantially different proposed staffing levels, which in turn were different from those assumptions on which the MEO was based.¹ Furthermore,

¹ The RFP alluded to work not specifically identified, which was the basis for Del-Jen to make assumptions about the magnitude of such work in preparing its proposal.

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the agency determined that competition under the RFP was unintentionally limited by the inadequacy of the PWS and other information available to the offerors; in fact, one of the offerors withdrew from the competition because of a lack of information available upon which it could prepare a proposal. Agency Report, Tab 11, Source Selection Board (SSB) Report to the Source Selection Authority (SSA), at 8-9; see Agency Report, Tab 16, Letter from Offeror (requesting additional information during proposal preparation). Based on the foregoing, the agency determined that the RFP was deficient, which caused an unfair competition among the offerors and between the public and private sectors, as well as precluding other potential offerors from submitting proposals. Agency Report, Tab 11, Source Selection Board (SSB) Report to the Source Selection Authority, at 9. On April 9, 2002, the agency canceled the RFP.

IT protested the agency's decision to cancel the RFP, essentially alleging that the action was unjustified, because the informational deficiencies were assertedly superficial, such that merely amending the RFP and obtaining a revised proposal from IT would have been all that was required, and because, notwithstanding the lack of information, IT was able to prepare the winning proposal based on the RFP and should thus receive award. Alternatively, the protester alleges that the agency should have known before submission of proposals that the RFP was deficient, in part because IT had submitted Freedom of Information Act (FOIA) requests prior to submitting its proposal, in which it requested significant information relevant to proposal preparation that was lacking from the RFP. Since the agency did not take that opportunity to provide adequate information in the RFP, the protester contends that IT is entitled to proposal preparation costs.

In a negotiated procurement, an agency has broad authority to decide whether to cancel a solicitation; there need be only a reasonable basis for the cancellation. This authority extends to the cancellation of solicitations used to conduct A-76 cost comparisons. So long as a reasonable basis exists to exercise this authority, an agency may cancel a solicitation regardless of when the information precipitating the cancellation first surfaces. Rice Servs., Ltd., B-284997.5, Mar. 12, 2002, 2002 CPD ¶ 59 at 4; Lackland 21st Century Servs. Consol., B-285938.7, B-285938.8, Dec. 4, 2001, 2001 CPD ¶ 197 at 5. In terms of whether the RFP could or should have simply been amended, if an amendment of a solicitation is so substantial that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer is required to cancel the original solicitation and issue a new one, regardless of the stage of the acquisition. Federal Acquisition

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On the other hand, IT made narrower assumptions in preparing its proposal, addressing only work specifically identified in the RFP. The technical evaluation board determined that IT's proposal appeared to comply with the terms of the RFP as written.

Regulation (FAR) § 15.206(e); see The New Jersey and H Street Ltd. Partnership, B-288026, B-288026.2, July 17, 2001, 2001 CPD ¶ 125 at 3-4.

Here, the record establishes that the RFP does not address significant agency requirements. For example, the RFP does not address the service provider's responsibility for computer hardware and MAXIMO system upgrades, which are expensive items that were not included in the costs of the eventual contractor or MEO. Agency Report, Tab 11, Source Selection Board (SSB) Report to the Source Selection Authority, at 8. This is not substantively disputed by the protester. Where, as here, a solicitation does not reflect an agency's actual material requirements, the agency's decision to cancel and resolicit is proper. Freedom Graphic Sys., Inc., B-277305, Sept. 22, 1997, 97-2 CPD ¶ 82 at 2; Program Resources, Inc., B-215201, Sept. 25, 1984, 84-2 CPD ¶ 356 at 3.

The inadequacy of the workload data and other work parameters provided in the RFP also provides a reasonable basis to cancel the RFP. Not only does the protester's rejection of this determination not rise above mere disagreement with the agency, which is insufficient to render the agency's determination unreasonable, see Williams College, B-259351, Mar. 23, 1995, 95-1 CPD ¶ 162 at 3, the protester's actions and statements in fact support the agency's determination. That is, in making its FOIA requests, IT vigorously sought additional information from the agency on the basis that such information was needed to prepare a competitive proposal and to be on a "level playing field" with the MEO. Protest, exh. B, IT's FOIA Requests; Agency Report, Tab 4, IT's FOIA Appeal. The information requested included the same missing information that the agency now states should have been provided to the offerors. Moreover, the protester acknowledges that the MEO had better information than private-sector offerors, which the agency asserts did not allow for a fair competition.² Protester's Comments at 11-12.

The record also clearly shows that another offeror withdrew because it requested from the agency, but did not receive, information similar to what the protester had sought and been denied. Although the protester contends that this offeror should have done more at the time to obtain the information, that argument misses the point. The record shows that, had the agency issued the RFP with the additional information as the agency now intends to do, at least one additional offeror likely would have submitted a proposal. In such circumstances, FAR § 15.206(e) requires the agency to cancel the solicitation and resolicit.

² The protester's solution is to simply allow IT a chance to revise its proposal with the new information, instead of canceling the RFP. This is hardly fair to the other offerors who may have submitted different proposals or potential offerors who did not propose because of the inadequacy of the information in the RFP.

The protester alternatively requests reimbursement of its proposal preparation costs. It alleges that the agency reasonably should have realized the defective nature of the RFP as a result of the protester's pre-proposal FOIA requests, and that the protester incurred significant costs of preparing its proposal, which has been rendered valueless by the cancellation of the RFP. We agree that it would have been preferable for the Navy to have corrected the deficiencies in the RFP far earlier in the process. However, our Office may recommend reimbursement of a protester's proposal preparation costs only where, in sustaining a protest, we determine that a solicitation, proposed award, or award does not comply with statute or regulations. 4 C.F.R. § 21.8(d) (2002); EAI Corp., B-252748, July 26, 1993, 93-2 CPD ¶ 56 at 2. Here, since we deny this protest and find that the agency's action is reasonable and consistent with regulation, it would not be appropriate for us to recommend reimbursement of costs to the protester.

The protest and claim for costs are denied.

Anthony H. Gamboa
General Counsel