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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Knight's Armament Company

File: B-299469

Date: April 7, 2007

David A. Lutz for the protester.

Daniel Pantzer, Esq., Department of the Army, for the agency.

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DIGEST

Agency's decision to cancel solicitation after receipt and evaluation of proposals was unobjectionable where the record shows that the agency reasonably concluded that none of the offered products met the solicitation's requirements, and that the stated requirements do not adequately reflect the agency's needs.

DECISION

Knight's Armament Company (KAC) protests the cancellation of request for proposals (RFP) No. W15QKN-06-R-0485, issued by the Department of the Army for M4 Carbine and M16A2/4 rifle suppressors. The agency canceled the solicitation based on a determination that no technically acceptable proposals were received and that significant revisions to the solicitation were needed. The protester maintains that the decision to cancel the solicitation lacks a reasonable basis.

We deny the protest.

The solicited suppressors for the M4 Carbine and M16A2/4 rifles will be used by infantry units to reduce each weapon's baseline muzzle sound, flash, and blast signature. The agency states by reducing noise volume these suppressors mitigate safety hazards, such as the risk of hearing loss, and improve the soldier's command and control of the weapon. The suppressors also promote survivability of soldiers by sufficiently reducing muzzle blast and flash so that the soldier's location remains undetectable to hostile forces. RFP at 4.

The RFP, issued on March 7, 2006, sought fixed-priced proposals to furnish a base requirement of 50 suppressors meeting the specifications identified in the

solicitation's purchase description, with four option quantities of between 4,000 and 10,000 units. The RFP was limited to suppressors that could be considered commercial, off-the-shelf, non-developmental items. Along with written proposals, offerors were to submit sample suppressors for testing.

The RFP advised that award would be made to the offeror whose proposal represented the best value to the government based on an integrated assessment of merit rating (technical testing of sample suppressors and production capabilities) and price, with the merit rating more important than price. RFP at 13. The RFP also advised that the sample suppressors would be tested in two phases: (1) under the "essential criteria" factor, the suppressors were to be measured and tested against 11 identified characteristics on a pass/fail basis; and (2) under the "rated requirements" factor, the suppressors were to be evaluated against 10 subfactors, using adjectival ratings of excellent, good, satisfactory and unsatisfactory. Id. at 14-22.

KAC was one of eight offerors submitting 11 proposals in response to this solicitation. Of these, the sample suppressors submitted by four offerors, including KAC, were tested against the rated requirements.¹ Contracting Officer's (CO) Statement at 2. All four of the tested suppressors were rated unsatisfactory under the user assessment subfactor which was the most important of the 10 "rated requirements;" none of the tested suppressors met or exceeded the performance standards in all areas evaluated. Agency Report (AR) exh. 5, Evaluation Report. Consequently, all four offerors received an overall rating of unsatisfactory under the "rated requirements" factor. Id. at 19.

The CO reviewed the evaluation results and determined that no offeror had demonstrated an ability to meet the government's stated requirements for the suppressors. Since none of the offered suppressors met the specifications, the agency decided to review the requirements for the M4 and M16A2/A4 suppressors, which led to the conclusion that significant solicitation revisions were needed in order to procure suppressors that would meet the Army's unique needs. See AR exh. 7, Product Manager's Memorandum; AR exh. 8, Director of Combat Development Memorandum. Based on these findings, the agency reports that "funding was suspended" for the procurement of the M4 and M16A2/4 suppressors. Supplemental Legal Memorandum at 5. The CO explained her decision to cancel the RFP as follows:

Under the thorough examinations and evaluations of all offerors [p]roposals, I have found that no offeror can meet the Government's requirements for a [commercial off-the-shelf, non-developmental item]

¹ Seven of the 11 proposals were found technically unacceptable under the first phase of assessing the offered suppressors against the 11 "essential criteria."

M4/M16 Suppressor at this time. All of the proposals submitted received an overall technical rating of “unsatisfactory” as a result of several factors, most importantly none of the suppressors met the user needs during the User Assessment area of the technical evaluation.

The problems found during the technical evaluation proved that in order to meet the Government’s requirements the suppressors would require major modifications, which would be accomplished only at a substantial increase in cost for both materiel and labor. This is too much of a risk to take when a firm fixed price contract is anticipated.

[The requiring activity] recommends cancellation . . . based on the following reasons:

- a. No technically acceptable candidate out of a total of 11 submissions for the M4/M16 suppressor RFP.
- b. Pending revisions to one or more requirements outlined in the Capabilities Production Document.

AR exh. 6, CO’s Cancellation Memorandum, at 21. This protest followed.

KAC argues that the agency’s decision to cancel the solicitation lacks a reasonable basis. The protester’s core allegation is that the evaluation of its offered suppressor was unreasonable and not consistent with the stated terms of the RFP. The protester contends that this improper evaluation led the agency to unreasonably conclude that no offeror could meet the Army’s need for commercial off-the-shelf suppressors despite the fact that KAC currently supplies suppressors to other government agencies under another contract.

In a negotiated procurement, a contracting agency need only establish a reasonable basis to support a decision to cancel an RFP. A reasonable basis for cancellation exists and cancellation is appropriate when a solicitation does not accurately reflect the agency’s requirements. Superlative Techs., Inc., B-293709.2, June 18, 2004, 2004 CPD ¶ 116 at 3. Here, the record reflects that the agency canceled the RFP and decided to revise its requirements after the CO reviewed the evaluation results and concluded that none of the tested suppressors met or exceeded the standards in all areas evaluated. For example, the evaluators determined that the protester’s offered suppressor was not a good candidate for use with the M4 and M16 rifles because when tested for toxic fumes the protester’s offered suppressor exceeded the acceptable limits set by OSHA (Occupational Safety and Health Administration), NIOSH (National Institute for Occupational Safety and Health), and ACGIH (American Conference of Governmental Industrial Hygienists) for carbon monoxide, ammonia, and hydrogen cyanide. AR exh. 5, Technical Evaluation Report, at 16-18; RFP at 21.

While the protester disagrees with the evaluation findings, such as the one above, the record here does not support a conclusion that the agency's evaluation was unreasonable. Rather, the Army has demonstrated that the cancellation resulted from anomalies in the evaluation results that raised questions concerning current system configuration standards and key performance parameters which the agency concluded needed refining. Thus, our review of the record provides no basis for us to object to the agency's decision to cancel the RFP and resolicit using a revised RFP.

In any event, although we conclude that the Army has advanced a reasonable basis for canceling the RFP, the agency subsequently has produced documentation indicating that the available funds for this procurement have been withdrawn. It is well established that the lack of funding for the requirements covered by an RFP clearly supports a decision to cancel, as agencies cannot award contracts which exceed available funds. Quality Support, Inc., B-296716, Sept. 13, 2005, 2005 CPD ¶ 172 at 2. So long as a reasonable basis exists, an agency may cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known, even if the cancellation occurs after proposals have been submitted and evaluated, or even if discovered during the course of a protest. Peterson-Nunez Joint Venture, B-258788, Feb. 13, 1995, 95-1 CPD ¶ 73 at 4.

The protest is denied.²

Gary L. Kepplinger
General Counsel

² The protester also argues that it should at least be entitled to recover its proposal preparation costs, given that the decision to cancel the solicitation was made after the protester had expended considerable resources to address the RFP. However, reimbursement of such costs is predicated on a finding by our Office that an agency's actions violated a procurement statute or regulation. 4 C.F.R. § 21.8(d) (2006). Since, as discussed above, we find nothing objectionable in the Army's decision to cancel the protested solicitation, we have no basis to recommend that the protester be reimbursed these costs. See Bahan Dennis Inc., B-249496.3, Mar. 3, 1994, 94-1 CPD ¶ 184 at 6.