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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: RKR Joint Venture, LLC--Costs

File: B-299856.2

Date: December 7, 2007

David F. Barton, Esq., The Gardner Law Firm, for the protester.
Gary R. Allen, Esq., Department of the Air Force, for the agency.
Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Where record reasonably supports agency's determination that cancellation of a protested procurement was necessary because, due to the passage of time, the solicitation no longer reflected the agency's actual requirements, we do not view cancellation as corrective action taken in response to a protest and, accordingly, do not recommend reimbursement of protest costs.

DECISION

RKR Joint Venture, LLC requests that our Office recommend that the Department of the Air Force reimburse RKR for the costs incurred in filing and pursuing a protest challenging the Air Force's decision, pursuant to Office of Management and Budget Circular A-76, to perform certain base operating services (BOS) at Keesler Air Force Base (AFB), Mississippi, in-house using the government's most efficient organization (MEO). RKR maintains that the agency should have awarded a contract for those services to RKR under request for proposals (RFP) No. F41689-02-R-0049.

We deny the request.

The Air Force first issued a draft solicitation for this procurement in February 2003, seeking proposals to provide communication and information technology services, multimedia services, and publishing management at Keesler AFB;¹ thereafter, various

¹ The solicitation at issue here was generally referred to as the "Little BOS" solicitation. The Air Force also issued a solicitation, generally referred to as the "Big BOS" solicitation, which contemplated performance of the other base operating

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amendments to the solicitation were issued. In June 2004, RKR submitted a proposal responding to the solicitation; thereafter, RKR's proposal was selected as the private-sector proposal offering the best value to the government for purposes of conducting a cost comparison with the MEO.

In September 2005, RKR was notified that further actions under this A-76 cost study had been postponed due to the effects of hurricane Katrina. The cost comparison was not completed until January 2007, at which point the MEO was selected to perform the solicited activities. RKR received a debriefing in February, and filed an administrative appeal with the Air Force's administrative appeal authority in March. RKR's administrative appeal was denied in May. Thereafter, RKR filed a protest with our Office.

By letter to this Office dated July 2, 2007, the Air Force stated: "This serves as notice that the Air Force intends to cancel the solicitation that was the subject of the [RKR] protest, has determined not to implement the MEO, and intends to resolicit for the requirement in the future." Upon receipt of this notification, we requested that the Air Force provide more information regarding the basis for its pending actions. By letter to this Office dated July 9, the Air Force reiterated its position, stating that "the Air Force has determined that cancellation of the solicitation, as opposed to amendment, is the proper course to take for a number of reasons," and provided further explanation regarding the bases for cancellation of the solicitation.

On July 30, GAO again requested that the Air Force provide additional information regarding the stated bases for cancellation. On August 2, the Air Force responded to our request, explaining that the solicitation no longer reflected the agency's needs due to the Air Force's pending centralization of a significant portion of the information technology services contemplated by the solicitation. Specifically, the Air Force submitted a statement from Major General William T. Lord, the Air Force's Director, Cyberspace Transformation and Strategy Office of Warfighting Integration and Chief Information Officer, which stated:

The Air Force has embarked on a major transformational initiative to completely overhaul and change the delivery of network services . . . to [a] centralized or enterprise-centric concept of operations (AFNetOps CONOPS). The initiative is entitled AFNetOps Transformation and impacts the following Air Force components: doctrine, organization, training, materiel solutions (i.e., technology), logistics, personnel, and facilities within the communications and information mission area. . . .

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services required to support Keesler AFB. RKR did not compete for the "Big BOS" solicitation.

The AFNetOps implementation plan will address the migration of core enterprise services which include, but are not limited to messaging, web, storage, and help desk from the base communications squadrons to regional area processing centers. For Keesler AFB, the functions mentioned above will no longer be performed at the base, and it is anticipated that AFNetOps has changed 57 percent of the requirement as set forth in the current Little BOS Solicitation.^[2] The current Little BOS Solicitation requirements no longer accurately reflect the Air Force needs, and any contract resulting from award under this solicitation will fail to meet the Air Force's requirements.

Statement of Major General Lord ¶¶ 1, 2.

Based on the entire record presented, we dismissed RKR's protest on the basis that cancellation of the solicitation rendered RKR's protest academic.³ RKR Joint Venture, LLC, B-299856, Aug. 29, 2007. On August 31, 2007, RKR submitted this request that we recommend reimbursement of the costs RKR incurred in filing and pursuing its protest.

Where an agency takes corrective action in response to a protest, our Office may recommend that a protester be reimbursed the costs of filing and pursuing that protest.⁴ 4 C.F.R. § 21.8(e) (2007). However, where, as here, the record reasonably

² Due to the differing nature of the services sought under the "Little BOS" and "Big BOS" solicitations, noted above, the agency's centralization initiative had a significantly greater impact on the "Little BOS" solicitation than it had on the "Big BOS" solicitation.

³ RKR's protest, filed prior to the agency's decision to cancel the procurement, challenged only the agency's basis for selecting the MEO, rather than RKR, to perform the contract requirements--not the subsequent cancellation of the solicitation. Accordingly, there could be no dispute that cancellation of the procurement rendered RKR's protest academic. Nonetheless, this Office sought additional information following the agency's notice of cancellation to ensure that the agency had a reasonable basis for canceling the procurement--even though that issue was not raised, and could not have been raised, in RKR's initial protest submission. As discussed above, and in our earlier decision dismissing RKR's protest, we concluded that the agency had a reasonable basis for canceling the solicitation.

⁴ Such recommendations are generally based upon a concern that an agency has taken longer than necessary to initiate corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. See, e.g., AAR Aircraft Servs.--Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5.

supports the agency's cancellation of a protested procurement on the basis that the solicitation at issue no longer represents the procuring agency's actual requirements, we do not view cancellation as corrective action taken to remedy a meritorious protest. See PAI Corp., B-244287.5, et al., Nov. 29, 1991, 91-2 CPD ¶ 508 at 4-5. Accordingly, we will not recommend reimbursement of protest costs. Id.

The request for reimbursement is denied.

Gary L. Kepplinger
General Counsel