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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Para Scientific Company

File: B-310742.2; B-310903

Date: February 14, 2008

Hiram Reinhart for the protester.

Theresa Chesnut, Esq., Department of the Navy, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of request for quotations (RFQ) was proper where agency reasonably determined that the RFQ materially overstated its requirements and that revising the RFQ would lead to enhanced competition.

DECISION

Para Scientific Company protests the corrective action proposed by the Department of the Navy, Fleet and Industrial Supply Center, San Diego, in response to Para Scientific's earlier protest of the issuance of an order to another firm under request for quotations (RFQ) No. N00259-07-T-0361, for microscope slides and slide cabinets. Para Scientific also protests the agency's cancellation of request for quotations (RFQ) No. N00258-08-T-0005, for histology cassettes, coverglasses, and chemical-resistant markers.

We deny the protests.

Para Scientific originally protested the issuance of an order to another firm under solicitation No. N00259-07-T-0361 on October 31, 2007, alleging that its offered price was low enough to warrant a split order and that its "alternate bid price" was lower than the total price offered by the selected firm.¹ In response to the protest, the

¹ Para Scientific quoted two prices in its response to the solicitation, one price for the items requested by the solicitation and an alternate, lower price, for "or equal" products that it regarded as technically equivalent. Agency Report (AR), Tab 4, Para Scientific Quote, at 2.

contracting officer reviewed the solicitation and determined that it was in the agency's best interest to terminate the order and make no other order under the solicitation. The agency stated that the contracting officer would develop a new procurement strategy and, on the basis of that proposed corrective action, our Office dismissed Para Scientific's protest as academic on November 8.

On November 9, Para Scientific filed a second protest challenging the proposed corrective action, alleging that the agency's decision to cancel the solicitation was improper and could only be justified as an attempt to direct an order to a favored firm or to circumvent the bid protest process. Protest, Nov. 9, 2007, at 1-2. On December 3, while our Office was engaged in developing the second protest, Para Scientific filed a third protest, challenging the cancellation of an unrelated solicitation for medical equipment, solicitation No. N00258-08-T-0005, alleging that the cancellation was retaliatory, and that "award manipulation is a possibility in this and other solicitations (see original protest as one other example)." Protest, Dec. 3, 2007, at 1. Due to the two protests' shared allegations and common facts, we will address both protests in this decision.

Each solicitation had the same contracting officer and the same contract negotiator, and each solicitation was intended to procure specified brand-name items. Supplemental Agency Report (SAR) at 3. Therefore, each solicitation was issued as a "brand-name only" requirement, rather than a "brand name or equal" requirement. Id. Para Scientific nevertheless offered "or equal" products in response to each of the solicitations.² After receiving Para Scientific's offer under solicitation No. N00259-07-T-0361, the agency attempted to evaluate whether the offered "or equal" product met the agency's requirements, but was ultimately unable to make that determination. AR at 5. The contracting officer therefore issued an order to another firm that had offered the brand-name products at the lowest price.

After Para Scientific challenged issuance of the order under that solicitation, the contracting officer reviewed the entire contract file and determined that there were significant problems with the solicitation that warranted cancellation. AR at 7. The contracting officer determined that the agency had (1) neglected to develop a sole source justification memorandum, (2) included technical evaluation criteria in the solicitation but had intended an award based solely on price, (3) included language in the solicitation that could suggest that "or equal" products would be considered even though the solicitation was issued as brand-name only, and (4) failed to permit a split-award where two disparate items were being solicited. Id. In light of these issues and Para Scientific's offer of "or equal" products, the contracting officer decided to cancel the solicitation, perform additional market research, and if a brand

² In response to solicitation No. N00259-07-T-0361, Para Scientific offered brand-name products as well as alternative "or equal" products. AR, Tab 4, Para Scientific Quote, at 2. In response to solicitation No. N00258-08-T-0005, Para Scientific offered only "or equal" products. SAR, Tab 6, Para Scientific Quote, at 4.

name or equal solicitation were warranted, issue a new solicitation including salient characteristics and all appropriate contract clauses. Id. at 8.

After conducting this comprehensive review of solicitation No. N00259-07-T-0361, the contracting officer realized that the same serious concerns existed with regard to solicitation No. N00258-08-T-0005. SAR at 6. The contracting officer therefore cancelled solicitation No. N00258-08-T-0005 based on the same rationale: that it was prudent to investigate whether the specifications could be less restrictive, and if a brand name or equal solicitation were warranted, issue a new solicitation including salient characteristics and all appropriate contract clauses. Id. at 6-7.

Para Scientific asserts that the reasonable course of action for the agency was not to cancel the solicitations, but rather to issue orders to Para Scientific on the basis of its lowest priced quotations of technically equal alternative products. Para Scientific argues that it is being “shunned for being creative” in offering more economical “or equal” products where other firms merely offered the brand-name products. Protest, Nov. 9, 2007, at 2. In response, the agency asserts that it could not have properly issued orders to Para Scientific under the solicitations as written, and argues that its decision to cancel the solicitations was reasonable in view of the contracting officer’s determination that each solicitation materially overstated the agency’s requirements and that the agency could obtain enhanced competition by relaxing the requirements. We agree.

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ, Surgi-Textile, B-289370, Feb. 7, 2002, 2002 CPD ¶ 38 at 2, and may cancel no matter when the information precipitating the cancellation first arises, even if it is not until offers (or, as here, quotations) have been submitted and evaluated. A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2-3. A reasonable basis to cancel exists when a new solicitation presents the potential for increased competition or cost savings. Robertson Leasing Corp., B-275152, Jan. 27, 1997, 97-1 CPD ¶ 49 at 3. Therefore, cancellation of a solicitation is proper where the solicitation materially overstates the agency’s requirements and the agency desires to obtain enhanced competition by relaxing the requirements. Id.

Here, Para Scientific’s own argument that its alternative products were technically equal to the agency’s requirements supports the reasonableness of the agency’s decision to cancel the solicitations, given that the solicitations were written as brand-name only requirements. Because the record reflects that the solicitations’ brand-name only requirements may have been overly restrictive, and because the agency identified multiple other flaws in the two solicitations, we find that the agency’s decision to cancel the solicitations was proper.

With regard to the allegation of bad faith implicit in Para Scientific’s claims of retaliatory action and award manipulation, government officials are presumed to act in good faith and a protester’s claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute

unfair or prejudicial motives to procurement officials on the basis of inference or supposition. ACC Constr. Co., Inc., B-289167, Jan. 15, 2002, 2002 CPD ¶ 21 at 4. We have reviewed the record here and find no evidence of bad faith or prejudicial motives toward the protester; as discussed above, the agency had a well-supported, legitimate basis to cancel and resolicit the RFQs.

The protest is denied.

Gary L. Kepplinger
General Counsel