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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Brian X. Scott

File: B-310970; B-310970.2

Date: March 26, 2008

Brian X. Scott for the protester.

Capt. John J. Cho and Col. David P. Harney, Department of the Army, for the agency. Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement, agency had a reasonable basis to cancel, after receipt of proposals, a solicitation for executive agent services, where the agency reasonably found that it would be more advantageous to satisfy its requirements through an existing contract.

DECISION

Brian X. Scott protests the cancellation of request for proposals (RFP) No. W91GDW-08-R-4006, issued by the Joint Contracting Command-Iraq/Afghanistan (JJC-I/A) for executive agent services for the Iraqi-Based Industrial Zone (I-BIZ) program. Mr. Scott complains that the cancellation of the RFP after receipt of proposals was unreasonable and was the result of bias against him.

We deny the protest.

The RFP provided for the award of a contract for an executive agent to oversee the I-BIZ program at the Victory Base Complex in Baghdad, Iraq, for a 6-month base period with five 6-month option periods. The I-BIZ program was established to implement the agency's "Iraqi First" program, under which multi-national forces were to use available Iraqi businesses, services and products, whenever possible.¹ RFP, Statement of Work (SOW), ¶ 2.0. It is the aim of the Iraqi First and I-BIZ

¹ The stated purpose for the "Iraqi First" program is to develop the Iraqi economy by increasing United States contracting with Iraqi businesses. See www.mnf-iraq.com/index.php?option=com_content&task=view&id=11741&Itemid=128.

programs to obtain various services, such as repair and cleaning services, from Iraqi vendors for United States and coalition forces. Offerors were informed that the I-BIZ executive agent would provide facilitation, consultation, and liaison support services for the I-BIZ program, and that

[t]his will consist of providing expert advice, assistance, and guidance on establishing I-BIZ Initiatives for [Multi-National Forces - Iraq], as well as identifying Iraqi candidate businesses and labor for I-BIZ initiatives.

In addition, the executive agent would “submit advisory suggestions when necessary with policy recommendation to ensure theater wide requirements are integrated and synchronized with current and future theater level operations.” RFP, SOW, ¶ 3.0. The executive agent was required to, at a minimum, be bilingual in English and Arabic, have a secret security clearance, and 2 years of experience working with business development projects in developing nations. Id. ¶ 5.0.

The agency received three proposals, including Mr. Scott’s, by the November 23 closing date for receipt of proposals. Mr. Scott’s and another offeror’s proposal were transmitted for evaluation to the Resources and Sustainment, Sustainment and Fusion Directorate of the Multi-National Force-Iraq, the requiring activity for the RFP.² Prior to the requiring activity’s receipt of the proposals for evaluation, the activity became aware of an existing JJC-I/A contract for Bilingual, Bicultural Advisor-Subject Matter Expert (BBA-SME) services, under which the I-BIZ executive agent might be obtained. The activity considered the use of the BBA-SME contract, but also evaluated Mr. Scott’s and the other offeror’s proposals. Agency Report (AR), Tab 15, Statement of Contracting Action Officer on the Deputy Chief of Staff, Resources and Sustainment, Sustainment Fusion Directorate of the Multi-National Force-Iraq.

The requiring activity found both proposals to be deficient in a number of respects. With respect to Mr. Scott’s proposal, the requiring activity found that he

did not provide personnel experienced in accomplishing the requirement, did not have prior experience in accomplishing the requirement, did not have the desired Arabic language skills, had too much turnover of key personnel to establish the long term relationships anticipated in the requirement, and only had an interim secret security clearance.

² The agency states it has no information explaining why the proposal of the third offeror was not forwarded to the requiring activity for evaluation.

Contracting Officer's Statement at 2.

The agency concluded that the services solicited by the RFP could be satisfied under the existing BBA-SME contract and that, in fact, "the requiring activity was attempting to satisfy the I-BIZ requirement using both the I-BIZ solicitation and the BBA-SME contract." AR at 3. The agency decided, after its evaluation of Mr. Scott's and the other offeror's proposal, that satisfying this requirement under the BBA-SME contract would be more advantageous than continuing under the RFP. AR, Tab 6, Army E-Mails (Dec. 12, 2007). On December 13, the agency cancelled the RFP "due to changes in operational requirements." RFP amend. 1. This protest followed.

In a negotiated procurement, an agency has broad authority to decide whether to cancel a solicitation, and to do so need only establish a reasonable basis. The Borenstein Group, Inc., B-309751, Sept. 26, 2007, 2007 CPD ¶ 174 at 3. We have found a reasonable basis for the cancellation of an RFP exists where an agency discovers an existing contract for its requirement that would be more advantageous to the government than continuing with the procurement. See Astronautics Corp. of Am., B-222414.2, B-222415.2, Aug. 5, 1986, 86-2 CPD ¶ 147 at 2-3. So long as there is a reasonable basis, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until proposals have been submitted and evaluated. Daston Corp., B-292583, B-292583.2, Oct. 20, 2003, 2003 CPD ¶ 193 at 3.

Mr. Scott contends that the I-BIZ executive agent services are outside the scope of the BBA-SME contract. Specifically, the protester contends that the BBA-SME contract provides for only "expert and advisory services, with no responsibility for nothing, not for Executive Agents, who are responsible for program success." Protester's Supplemental Comments at 9.

We disagree with Mr. Scott that the executive agent services solicited by the RFP are not within the scope of the BBE-SME contract. As noted above, the RFP sought a bilingual individual with a secret security clearance and experience to provide expert advice, assistance and guidance with respect to establishing I-BIZ initiatives. In addition, the RFP described the executive agent's services as including "recommend[ing] policy and at the direction of [Multi-National Forces - Iraq], initiate Iraqi First and I-BIZ requirements to address theater wide economic issues." RFP, SOW, ¶ 4.1. Similarly, the BBA-SME contract sought bilingual, experienced subject matter experts, most of which were required to have a secret or interim secret clearance to "assess, advice, and assist commanders in developing and implementing action plans for specific tasks." BBA-SME Contract, SOW, at 2. The contracts identified the areas in which possible tasks could be performed as including economic development and commerce; business development/contracting; and urban planning/infrastructure engineering. Id. at 9-11. We find from our review that the fairly broad scope of the BBA-SME contract statement of work includes the advice and assistance services sought by the RFP here.

We also find reasonable the agency's conclusion that it would be more advantageous to obtain the executive agent services under the existing BBA-SME contract rather than continuing with its procurement under this RFP. As noted above, the agency found that the protester's and the other offeror's proposals were deficient, and in particular that Mr. Scott's proposal did not demonstrate that he would satisfy the RFP's experience, Arabic language, and security clearance requirements. See Contracting Officer's Statement at 2. Although Mr. Scott disagrees with the agency's evaluation, he does not establish that the agency's concerns with his and the other offeror's proposals did not provide the agency with a reasonable basis to conclude it would be more advantageous to use its existing contract to satisfy these requirements. In addition, the agency concluded that obtaining these services from the BBA-SME contract, rather than under the RFP, could result in cost savings and would relieve the agency of having to administer two contracts.

Mr. Scott also complains that the agency's cancellation of the RFP was the result of bad faith and the agency's "institutional bias" against Mr. Scott. Specifically, the protester argues that it has protested other JCC-I/A procurements to GAO, which Mr. Scott described as "essentially political protests" to challenge the government's policy in Iraq, and that because of these protests the agency cancelled the RFP to avoid making award to Mr. Scott. Protest at 4-8.

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. Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. Mr. Scott has not provided such convincing proof to support its bad faith and bias allegations.

The protest is denied.

Gary L. Kepplinger
General Counsel