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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: System-Analytics Group
File: B-233051
Date: January 23, 1989

DIGEST

Since an agency may properly cancel a solicitation no matter when the information precipitating the cancellation arises, the cancellation of request for proposals (RFP) during the proposal evaluation period is proper where the evaluation factors listed in the RFP are deficient and the agency determines that resolicitation to reflect properly weighted evaluation factors is necessary to meet its actual minimum needs.

DECISION

System-Analytics Group (SAG) protests the Department of the Army's cancellation of request for proposals (RFP) No. DABT56-88-R-0011, and the reissuance of a replacement solicitation for support services related to manpower estimation methods to be provided to the Army Research Institute at Fort Belvoir, Virginia.

We deny the protest.

The RFP, issued on April 22, 1988, contemplated award of a fixed-price, indefinite quantity contract. Because the solicitation was structured to enable offerors to submit proposals for one, several, or all of the technical task areas, offerors seeking award of a contract covering more than one area were required to prepare and submit separate proposals for each. Separate, independent panels of technically and professionally qualified government personnel, impaneled for each task area, would evaluate all technical proposals submitted in a particular area.

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The evaluation would be based on the seven evaluation factors listed in the RFP in descending order of importance. The seven evaluation factors include the following: understanding of technical issues; technical approach; understanding of payoff to the Army; personnel qualifications; corporate experience and qualification; management system; and cost/price realism and reasonableness.

After submission of initial proposals, during the evaluation period, the Army's legal counsel discovered that the weights assigned to the evaluation factors in the Source Selection Guidance detailing the relative order of importance of the evaluation factors was inconsistent with the RFP's statement that the evaluation factors were listed in descending order of importance. The Army's subsequent examination of the Institute's January 7 procurement request revealed that while the Army had consistently listed the evaluation factors in descending order, as set forth in the RFP, the Institute actually intended that these factors bear the weights indicated in the Source Selection Guidance, which was provided to the task area evaluation panels as the basis for their evaluations.

Following the contracting officer's determination that the evaluation method described in the solicitation was inconsistent with the scheme desired by the Institute, the Army concluded that the RFP did not properly describe the government's minimum needs, and canceled the RFP on September 19. In addition to canceling the solicitation and revising the defective evaluation plan, the Army made other major revisions to the solicitation to clarify and add detail to some sections and to include requirements that had been inadvertently omitted from the original RFP.

SAG contends that the contracting officer acted arbitrarily, capriciously and with gross negligence in failing to discover any errors in the RFP's evaluation criteria until after the evaluation period had begun and, consequently, that the decision to cancel at this time was made in bad faith. SAG alleges that the cancellation and resolicitation will prejudice the firm. SAG therefore requests that the Army award the contract pursuant to the evaluation criteria in the original RFP, even if deficient or, that it be reimbursed its proposal preparation and protest costs.

In a negotiated procurement, the contracting officer has broad discretion in deciding whether to cancel a solicitation; he need only have a reasonable basis to do so, as opposed to the stricter requirement for cancellation of a solicitation after sealed bids have been opened, that the

opposed to the stricter requirement for cancellation of a solicitation after sealed bids have been opened, that the cancellation be supported by a cogent and compelling reason. Shiloh Forestry, B-230582, June 21, 1988, 88-1 CPD ¶ 591. We previously have held that a flawed evaluation scheme satisfies the stricter "cogent and compelling" standard. See Union Natural Gas Co., B-225519.4, June 5, 1987, 87-1 CPD ¶ 572.

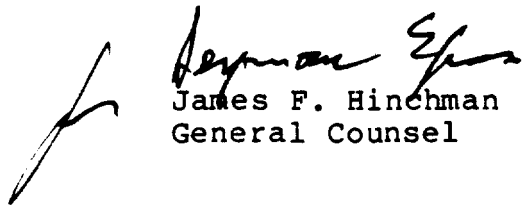
We find that the circumstances here satisfy the applicable standard for cancellation. The Army's failure to assure that the RFP reflected the evaluation weights desired by the Institute and set forth in the Source Selection Guidance precluded offerors from structuring their proposals in accordance with the manner in which proposals were to be evaluated. Without knowing the proper relative importance of the evaluation factors, offerors could not intelligently structure their proposals to best offer exactly what the Army wanted. The alternative suggested by SAG--to base the evaluation on the weights as indicated in the RFP--is not viable since doing so would preclude the Army from awarding a contract that would meet its minimum needs. Specifically, the Army states that using the evaluation criteria as stated in the solicitation could result in an award to an offeror that understands the applicable task area technical issues and the potential advantages to the Army, but whose technical approach and proposed staff would be inadequate or inappropriate to address those task issues in the manner most advantageous to the Army. We conclude that the defective evaluation scheme warranted canceling the RFP.

The fact that the Army discovered the deficiency only after receipt of proposals, and not earlier, does not preclude cancellation. An agency properly may cancel a solicitation no matter when the information precipitating the cancellation arises, even if that is not until after proposals are submitted and the protester has incurred costs in pursuing the award. Environmental Tectonics Corp., B-224770, Nov. 19, 1986, 86-2 CPD ¶ 591.

SAG's allegation that the cancellation was motivated by bad faith is without merit. A finding of bad faith requires undeniable proof that the procuring activity had a malicious and specific intent to injure the alleging party. Union Natural Gas Co.--Reconsideration, B-224607.2, Apr. 9, 1987, 87-1 CPD ¶ 390. The protester has presented no such proof. The mere fact that proposals had been submitted to the evaluation panels 2 months prior to detection of the deficient evaluation factors, a fact SAG points to as significant, in no way establishes bad faith on the agency's part; there is no indication that the agency's action in

canceling was prompted by its knowledge of proposal information apart from the evaluation scheme deficiency, or that the cancellation was intended to prevent SAG from receiving the award. We will not attribute unfair or prejudicial motives to contracting officials on the basis of inference or supposition. See GTE Government Systems Corp., B-222587, Sept. 9, 1986, 86-2 CPD ¶ 276.

SAG requests reimbursement of its proposal preparation and protest costs. There is no basis for allowing recovery of such costs, however, where, as here, there is no indication that the agency acted improperly. See Martin Widecker, Inc.--Request for Reconsideration B-223159.3, Mar. 18, 1987, 87-1 CPD ¶ 300.



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