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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-216201

DATE: May 10, 1985

MATTER OF: Dynalectron Corporation

DIGEST:

1. GAO will only review an agency's decision to perform in-house rather than contract out for certain services when a competitive solicitation has been issued for the purpose of ascertaining the cost of contracting out and it is alleged that the comparison is faulty or misleading.
2. GAO will review protests concerning the cancellation of a solicitation issued for A-76 cost comparison purposes since the competitive procurement system is involved.
3. A protest against an agency's cancellation of a request for proposals issued as part of an Office of Management and Budget Circular A-76 cost comparison is denied where the agency reasonably determines that the solicitation does not accurately reflect its minimum needs.
4. Unsupported allegations of bad faith by procuring officials do not meet the protester's burden of proof.
5. Technical transfusion involves an agency's taking of an approach or solution from one offeror's proposal and giving it to another offeror. When the protester argues that the agency has improperly appropriated an idea presented in its proposal, but the record shows that agency personnel already were aware of the concept involved and had rejected it, GAO cannot conclude that technical transfusion has occurred.
6. GAO will deny a claim for proposal preparation costs where the claimant has

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not shown that the agency acted arbitrarily and capriciously in canceling a solicitation and that, but for such action, the protester would have had a substantial chance for award.

Dynalectron Corporation protests the cancellation of request for proposals (RFP) No. N00140-83-R-1438, issued by the Naval Regional Contracting Center as part of a cost comparison in accord with Office of Management and Budget Circular A-76. The solicitation requested proposals for operation of the Autodin Communications Center at the Navy Finance Center, Cleveland, Ohio.

Dynalectron, the only firm that submitted a proposal, contends that cancellation of the RFP was arbitrary, had the appearance of impropriety, and involved technical transfusion. It requests that the Navy reinstate the solicitation or, alternatively, that we award it proposal preparation costs.

We deny the protest and the claim.

The Navy indicates that the solicitation was canceled due to changes in work procedures and methods that required significant revisions to the performance work statement. The original solicitation, which provided for a 1-year contract beginning October 1984 and 2 option years, was issued on September 30, 1983. The scope of the work included processing message traffic, distributing and collecting messages, maintaining a library and files, performing minor maintenance on certain equipment, performing certain custodial functions, and operating a Military Affiliate Radio System as required. Closing date for receipt of proposals was January 16, 1984.

As a result of a preaward survey conducted on February 9, 1984, the Navy concluded that Dynalectron did not fully understand the extent of the work to be performed. Following a series of meetings, Dynalectron submitted a revised proposal on June 14, confirmed on June 27, 1984, that substantially increased both its proposed staff and its total price. Concurrent with these negotiations, during the period from May 29 to June 29, 1984, the Navy experienced a serious message backlog. The agency's efforts to resolve this problem resulted in the determination that, in order to relieve peak workload problems and make more effective use of wordprocessing

equipment, outgoing messages should be prepared by the organizations originating the messages, rather than by the Communications Center. While outgoing messages formerly had accounted for approximately 45 percent of the workload at the Communications Center, the Navy estimated that under the new procedures, they would account for less than 2 percent.

On July 2, 1984, the Commanding Officer of the Navy Finance Center approved the proposed change. The Navy contends that its effect on the performance work statement and on the estimated cost of performance were sufficient to justify cancellation of the RFP.

Dynalectron was informed of the decision to cancel on July 6, 1984. At the firm's request, the Commanding Officer of the Naval Regional Contracting Center reviewed the decision, reaffirming it by letter of August 9, 1984. The Navy stated that a revised performance work statement would be issued in April 1985, with performance to begin in January 1986.

Generally, our Office does not review agency decisions to perform in-house rather than to contract for certain services because we regard the decision as a matter of executive branch policy. Midland Maintenance Inc., B-202977.2, Feb. 22, 1982, 82-1 CPD ¶ 150. However, we review such decisions when a competitive solicitation has been issued for the purpose of ascertaining the cost of contracting out and it is alleged that the resulting comparison with the cost of performing the work in-house is faulty or misleading. West Coast Fire Service, Inc., B-211484, Dec. 13, 1983, 83-2 CPD ¶ 673. In addition, we review protests concerning the cancellation of solicitations issued for A-76 cost comparison purposes, since the competitive procurement system is involved. D-K Associates, Inc., 62 Comp. Gen. 129 (1983), 83-1 CPD ¶ 55. In such circumstances, we apply the general rules regarding cancellation in evaluating the propriety of the contracting officer's decision. Id.

In a negotiated procurement, the contracting officer is endowed with broad powers to decide whether to cancel a solicitation, Baucom Janitorial Services, Inc., B-210216, May 31, 1983, 83-1 CPD ¶ 584, and need only establish a reasonable (as distinguished from compelling) basis for the cancellation. Allied Repair Service, Inc., 62 Comp. Gen. 100 (1982), 82-2 CPD ¶ 541. Moreover, the decision to

cancel is closely linked to an agency's discretionary authority to determine its minimum needs and the best method of accommodating its needs. Baucom Janitorial Service, Inc., supra. The protester bears the burden of showing that the cancellation is unreasonable. Surgical Instrument Company of America, B-211368, Nov. 18, 1983, 83-2 CPD ¶ 583.

In this case, where the record shows that the Navy anticipates a more than 40 percent decrease in one segment of its workload, we cannot find that the decision to cancel lacked a reasonable basis.

While Dynalectron argues that the solicitation should have been amended and the government's estimate for performing in-house revised accordingly, so that the cost comparison could have been made under the original solicitation, the Navy states that the changes in message processing are being implemented over several months, as wordprocessing capability is made available to different organizations, so that a new performance work statement was not immediately available. Where, as here, an agency reasonably believes that its needs are not accurately reflected by the RFP, cancellation is an appropriate action. Gill Marketing Co., Inc., B-194414.3, Mar. 24, 1980, 80-1 CPD ¶ 213. As for Dynalectron's complaint that the Navy should have acted earlier, i.e., before the pre-award survey, our approach is to look to whether an agency's actions are supportable, regardless of the timing. Chrysler Corp., B-206943, Sept. 24, 1982, 82-1 CPD ¶ 271. We find that in this case the cancellation is supportable.

Dynalectron further alleges that the Navy's actions may involve technical transfusion in that the Navy may be utilizing ideas that it discussed with Dynalectron during negotiations. The Navy asserts that concept of having message originators key narrative messages (defined as those not produced by or addressed to a computer) into a machine-readable medium that would be used by the Communications Center to transmit the messages did not originate with Dynalectron. In addition, the Navy states, the changes currently being implemented do not involve the use of the optical scanning equipment that Dynalectron suggested.

Technical transfusion implies that the contracting agency has taken an approach or solution from one

offeror's proposal and given it to another offeror. Guardian Electric Mfg Co., 58 Comp. Gen. 119 (1978), 78-2 CPD ¶ 376. Here the record indicates that Navy personnel were aware of the concept of optical scanning equipment, but had earlier rejected it for use at the Communications Center. We therefore are unable to conclude that technical transfusion occurred.

Dynalectron further alleges that Navy personnel negotiated in bad faith, deliberately delaying the contract award in order to circumvent cost comparison procedures. In addition, Dynalectron charges that one Navy employee created the appearance of impropriety or bias by being involved in both the agency's cost estimate and Dynalectron's evaluation, and allegedly by forcing Dynalectron to increase its proposed price. The Navy states that the contracting officer delayed the cost comparison because Dynalectron had seriously underestimated the requirements of the performance work statement. As a result, the Navy states, the firm's anticipated production rate of 1,200 messages an hour, raised from the original estimate of 30 an hour, was unattainable with the number of personnel proposed. After the preaward survey, Navy representatives met with Dynalectron to explain the deficiency, and after a second visit to the Navy Finance Center, Dynalectron submitted a revised proposal that provided for a substantial increase in manpower and a 39 percent increase in price. By that time, the Navy asserts, it had experienced the message backlog that resulted in the determination that the solicitation no longer reflected its minimum needs.

The Navy also states that none of the personnel involved in this procurement had a personal or financial interest in the outcome of the cost comparison; the individual accused of bias was not involved in the Navy's independently-developed cost estimate and will retain his job regardless of the outcome. Moreover, even the contracting officer did not know the amount of the estimate.

The protester has the burden of presenting sufficient evidence to support an allegation of bad faith or bias on the part of procuring officials. Unsupported allegations such as Dynalectron has made here do not meet that burden. A-B Emblem, B-209634, Apr. 8, 1983, 83-1 CPD ¶ 375.

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In conclusion, we find that the cancellation was proper and that the Navy negotiated in good faith. Accordingly, we cannot find that Dynalectron has been subjected to arbitrary and capricious treatment or that, but for such treatment, it would have had a substantial chance for award. Such a showing is a prerequisite to entitlement to bid preparation costs. See D.K. Associates, supra. Therefore Dynalectron is not entitled to recover its costs.

We deny the protest and the claim.

for Seymour E. Fox
Harry R. Van Cleve
General Counsel