



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dosco, Inc.
File: B-224210
Date: December 23, 1986

DIGEST

1. In a negotiated procurement, the contracting officer need only establish a reasonable basis to support a decision to cancel the solicitation. A reasonable basis exists where the agency determines that the solicitation's data package needs to be extensively revised to insure that the manufacture of highly complex parts is properly controlled and the parts properly tested. The fact that there have been several attempts to revise the data package by amendments to the solicitation does not mean that the data package is adequate; nor does the fact that original source manufactured parts from data package, since the data package must be used by firms who have not previously manufactured the parts.

2. General Accounting Office will not consider unsupported allegations that competitor's lower price must be the result of a below cost buy-in or of a leak of the protester's price. In any event, the submission of a below cost offer does not, in itself, provide grounds for rejection of an offer.

DECISION

Dosco, Inc. protests the agency's withdrawal of its certificate of competency (COC) to the Small Business Administration (SBA) referral and the cancellation of request for proposals (RFP) No. F09603-86-R-3448, issued by Robins Air Force Base, Georgia, for 267 drum assemblies for the 30MM gun used on the A-10 aircraft.

We deny the protest.

The solicitation, which provided for award to the low acceptable offeror, was issued on May 21, 1986 with an amended closing date of July 7, for receipt of initial proposals. The Air Force received several proposals and Dosco's initial offer was not low. During the evaluation the Air Force discovered that an earlier solicitation amendment had inadvertently deleted some testing requirements along with some drawings.

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Amendment 04, issued on August 8, incorporated the erroneously deleted drawings and testing requirements and asked for best and final offers. This time Dosco was the low offeror.

At this time the contracting officer requested a preaward survey of Dosco. The survey recommended no award because of unsatisfactory findings relating to Dosco's financial capability and accounting system. While the preaward survey was being conducted, the agency discovered that the solicitations Government Furnished Equipment (GFE) clause was incomplete in that it failed to include a necessary piece of tooling. This was included by amendment 05, which also called for best and final offers to be submitted by September 15. In order to expedite the award process before best and final offers were evaluated on September 15, the agency referred Dosco's negative responsibility determination to the SBA for the possible issuance of a COC. After proposals were evaluated, the Air Force concluded that Dosco was no longer the low offeror and, therefore, on September 16, the agency contacted the SBA and withdrew the COC referral. Subsequently, the agency concluded that the RFPs' data package was inadequate in that among other things it failed to set out proper testing requirements. The agency canceled the RFP in order to redraft the data package.

Dosco argues that there exists no reasonable basis for the cancellation and maintains that the agency's withdrawal of the COC referral improperly deprived it of its right to have the SBA determine its responsibility. Dosco further objects to the agency's nonresponsibility determination as unreasonable and argues that no other offeror could have submitted a lower price in its second best and final offer, unless such an offer was either a "flagrant buy-in" or the result of a leak of Dosco's price. The protester asks that the RFP be reinstated and that negotiations be resumed with all offerors within the competitive range after the data package is amended. Dosco also requests that the Air Force conduct another preaward survey of the firm.

Contracting agencies have broad discretion in determining when it is appropriate to cancel a solicitation. In a negotiated procurement, the agency need only have a reasonable basis for cancellation after receipt of proposals as opposed to the "cogent and compelling" reason required for cancellation of a procurement after sealed bids have been opened. Cadre Technical, Inc. et al., B-221430 et al., Mar. 14, 1986, 86-1 CPD ¶ 256. This distinction is based on the public disclosure of competitive positions which occurs as a result of the public opening of bids in sealed bid procurements--an event which does not occur in negotiated procurements. Baucom Janitorial Service, Inc., B-210216, May 31, 1983, 83-1 CPD ¶ 584.

Here, the Air Force determined that the RFP data package needed to be extensively revised to insure that the manufacturing of these highly complex parts is properly controlled. Specifically, the agency explains that the RFP must provide that the contractor have master and other special tooling as well as the necessary custom built, automated machinery. Further, the agency notes that the original data package did not provide for all the GFE needed to test the parts or for adequate first article testing.

Dosco argues that since the agency has amended the solicitation several times in an attempt to refine the data package and the part has been successfully produced in the past based on the same data there can be no justification for the cancellation. Further, the protester insists that if revisions need to be made they can be accomplished in a few hours and could easily be incorporated into the solicitation by amendment.

We think the agency had a reasonable basis for the cancellation. The problems cited by the agency relate to the production of the parts by firms such as Dosco that have not previously made the part. Also, we have no basis to conclude that the protester's estimate that the necessary modifications to the RFP can be accomplished in a few hours is more accurate than the agency's estimate of 3 months. Dosco has not shown that the Air Force - lacked a reasonable basis for canceling the RFP in order to revise the RFP data package. In any event, since at the time of cancellation Dosco was not the low offeror^{1/} and not in line for award, we do not think that Dosco was prejudiced by the cancellation. In this regard, it suggests that negotiations be suspended and an amendment to the solicitation issued incorporating the changes. Whether the solicitation is canceled or an amendment issued, Dosco would be given the opportunity to submit a new offer based on a revised solicitation.

^{1/} Dosco argues that any competitors' lower price must be either a below cost buy-in or the result of a leak of the protester's price. The protester offers no support for either contention. We do not consider unsupported allegations. Alan Scot Industries, B-219096, June 20, 1985, 85-1 CPD ¶ 706. Moreover, the submission of a below-cost offer does not, in itself, provide grounds for its rejection. Price Waterhouse, B-220049, Jan. 16, 1986, 86-1 CPD ¶ 54.

Dosco further complains that while cancellation is the responsibility of the contracting officer, in this case it appears that the decision was made by agency technical personnel rather than the contracting officer. Here, the cancellation was in fact accomplished by a determination dated September 19, signed by the contracting officer and approved by the Director of Contracting. The contracting officer did not act improperly in basing her decision on advice from agency technical personnel.

Dosco finally states that the Air Force did not furnish all of the documents justifying the decision by the contracting officer to cancel the solicitation. We are advised that Dosco was furnished a copy of the "Contracting Officer's Statement Facts and Finding." That statement sets out the basis for cancellation.

Since we have decided that the cancellation had a reasonable basis the remainder of the issues raised which concern Dosco's responsibility are academic and need not be considered.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel