



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AMBIS Systems
File: B-237213
Date: December 22, 1989

DIGEST

Agency's cancellation of a brand name or equal request for proposals (RFP) after receipt of best and final offers was proper where the contracting officer reasonably determined that the RFP overstated the agency's minimum needs and discovered similar equipment meeting the agency's minimum needs at lower cost on a mandatory Federal Supply Schedule.

DECISION

AMBIS Systems protests the cancellation of request for proposals (RFP) No. 89-38(N), issued by the Centers for Disease Control (CDC), Department of Health and Human Services, for a radioisotope detector and supporting computer system to be used in conducting AIDS research, and the subsequent purchase of such equipment from Bioscan, Inc., using a mandatory Federal Supply Schedule (FSS) contract. AMBIS contends it was improper for CDC to cancel the RFP after receipt of proposals and then place an order for the equipment under the FSS contract, because canceling the solicitation permitted CDC to procure equipment that did not meet its minimum needs, eliminated review by the appropriate technical personnel, and limited AMBIS' ability to protest.

We deny the protest.

CDC issued the RFP on April 20, 1989 seeking AMBIS' brand name radioisotope detector and supporting computer system, the Radioanalytic Imaging System, or equivalent equipment. Three offers were received by the May 22 closing date, and of these, AMBIS and Bioscan were determined to be within the competitive range. AMBIS offered its brand name system while Bioscan offered equipment purportedly "equal" to the

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AMBIS system.^{1/} After discussions were held with both offerors, best and final offers (BAFOs) were received on September 11. During evaluation of BAFOs, CDC officials noticed that the equipment being offered as "equal" by Bioscan was also available through a mandatory FSS contract administered by the General Services Administration.^{2/} Thus, on September 22, the contracting officer canceled the solicitation, and shortly thereafter placed an order for Bioscan equipment under the terms of Bioscan's FSS contract. On October 2, AMBIS filed a protest with our Office.

AMBIS alleges that the contracting officer acted improperly in canceling the RFP and ordering the Bioscan equipment, because that equipment does not meet CDC's minimum needs as reflected in the following two salient characteristics of the canceled RFP: (1) that the equipment offer resolution no less than 0.8mm in the X and Y directions for all radioisotopes; and (2) that the equipment's computer system accept data from two multiwire proportional counters at the same time while simultaneously analyzing other data. The Bioscan equipment apparently does not meet these requirements. AMBIS argues that by canceling the RFP, the contracting officer was able to procure equipment inadequate for CDC's needs (as measured by the canceled RFP), circumvent review by CDC's technical committee, and limit AMBIS' ability to lodge a successful protest against this procurement.

As additional evidence that CDC did not procure in accordance with its minimum needs, AMBIS cites statements allegedly made by agency officials during a debriefing of AMBIS on September 27, that contradict CDC's official

^{1/} Paragraph C.3 of the RFP listed eight salient characteristics of the radioisotope detection equipment needed by CDC to further its research into AIDS viral genetic information. Paragraph H.1(a) of the RFP advised offerors that proposals offering "equal" equipment would be considered for award if the equipment met the eight salient characteristics set forth in the RFP.

^{2/} FSC Group 66, Part II, Section A, Class 6650. The contracting officer states that procurement personnel attempted to ascertain whether the instant equipment could be purchased via the FSS before the solicitation was issued. He explains that the equipment was not found because procurement personnel did not realize that radioisotope detectors were classified under Video Image Analysis Systems in the FSS.

description of its equipment needs. Specifically, AMBIS alleges that two members of CDC's technical committee, both of whom are researchers and the ultimate users of the equipment at issue, reiterated during the debriefing the need for equipment that would comply with the salient characteristics included in the canceled RFP. According to AMBIS, the researchers stated that if the resolution capability of any purchased equipment was less accurate than specified in the RFP, ongoing research efforts would be hampered; AMBIS also claims the researchers reemphasized the importance of the RFP's requirement that the equipment possess the capacity to operate two multiwire detectors from one computer system.

CDC responds that the canceled RFP overstated the minimum needs of the agency with respect to the two salient characteristics; that CDC is in the best position to determine its minimum needs; that substantial savings were achieved by ordering the Bioscan equipment off the FSS; and that the requirements of a canceled RFP are irrelevant in determining whether the purchased equipment meets agency needs. CDC argues that its determination of agency needs, and the resulting decision to cancel an RFP it believed overstated those needs, must be accorded great deference unless the protester alleges and demonstrates bad faith by the agency. Further, CDC argues that once it has a reasonable basis for its decision to cancel an RFP, the requirements of that canceled RFP are no longer relevant to the decision to purchase equipment via the FSS.

With regard to the protester's allegation that two CDC researchers contradicted CDC's current description of its minimum needs, CDC submitted sworn statements from the researchers identified by AMBIS. In these statements, the researchers assert that they concur with the determinations made by the head of their division regarding agency needs and the adequacy of the Bioscan equipment to meet those needs. CDC also provided a sworn statement by the head of the research division. In this statement, the division head asserted it was his responsibility to determine the minimum needs of the agency with respect to this equipment, and affirmed his determinations that the RFP exceeded those minimum needs and should be canceled, and that the Bioscan equipment met those needs.

In a negotiated procurement, a contracting officer need only have a reasonable basis to cancel a solicitation after receipt of proposals, as opposed to the cogent and compelling reason required for cancellation of an IFB after receipt of sealed bids. Union Natural Gas Co., B-225519.4, June 5, 1987, 87-1 CPD ¶ 572. Here, CDC determined that

cancellation of the RFP and purchase from the FSS would meet its minimum needs and also achieve a substantial cost savings. Once it determined that the Bioscan equipment would meet its needs, CDC was required to place an order with Bioscan since the equipment appeared on a mandatory FSS contract. See Federal Acquisition Regulation §§ 8.404, 8.404-1; Bio-logic Sys. Corp., B-219909.2, Jan. 15, 1986, 86-1 CPD ¶ 41. Thus, we find that the CDC clearly had a reasonable basis for its decision to cancel the RFP.

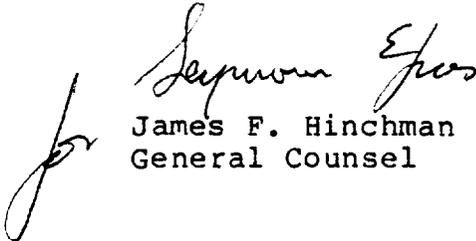
AMBIS asserts that CDC's purchase of the Bioscan equipment fails to meet the agency's minimum needs because the equipment lacks two of the salient characteristics set forth in the canceled RFP. The record does not support AMBIS' challenge to the agency's determination of its minimum needs.

As noted above, CDC submitted a sworn declaration from the Chief of the Molecular Biology Section of the Laboratory Investigations Branch of the AIDS program stating that the two characteristics highlighted by the AMBIS protest exceed the agency's minimum needs, and that the Bioscan equipment meets the agency's needs. In addition, the two CDC researchers identified by AMBIS have attested to their agreement with these decisions in their own separate declarations. Despite the declarations submitted in response to its assertion, AMBIS insists that our Office hold a conference to challenge the statements of the head of the research division and the two CDC researchers, and to question a third researcher about his equipment needs. We have no reason to believe these individuals would recant their prior sworn statements, nor do we believe any statement by a third researcher would change the validity of the determination of minimum needs by the head of the research division. Accordingly, we deny the request for a conference.

Except for its disagreement with CDC's position, AMBIS has offered no basis, and we see none in the record, to challenge CDC's determination of its minimum needs. In addition, we find no evidence of bad faith or improper motives by CDC contracting personnel to support AMBIS' allegations that the contracting officer canceled the RFP to avoid a review of the purchase by CDC's technical committee, and to limit AMBIS' ability to protest. See Business Communications Sys., Inc., B-218619, July 29, 1985, 85-2 CPD ¶ 103, aff'd, B-218619.2, Sept. 17, 1985, 85-2 CPD ¶ 293.

Additionally, AMBIS asks for reimbursement of its proposal preparation costs on the basis that it was unreasonably induced to submit a proposal in response to an overstatement of agency needs, citing Thorn EMI Technology, B-228120, Jan. 15, 1988, 88-1 CPD ¶ 36. We do not agree, and we deny the request for award of costs. Although AMBIS was, in fact, invited to submit a proposal in response to a solicitation which overstated the agency's needs, unlike in the Thorn EMI Technology case the agency did not act unreasonably or in violation of the Competition in Contracting Act (CICA). Mere submission of a proposal in response to an RFP that is subsequently determined to overstate the government's needs and is properly canceled, without any corresponding impropriety by the agency, is insufficient to justify award of protest or proposal preparation costs. See Meridian Corp.--Award of Costs, B-228468.2, June 14, 1988, 88-1 CPD ¶ 566.

The protest is denied.



James F. Hinchman
General Counsel