

Matter of: LB&B Associates, Inc.

File: B-254708

Date: December 30, 1993

Rick Franz for the protester.
Eric A. Lile, Esq., and D. Susan Spiegelman-Boyd, Esq.,
Department of the Navy, for the agency.
David Hasfurther, Esq., and Linda C. Glass, Esq.; Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Since an agency may properly cancel a solicitation, no matter when the information arises, the cancellation of a request for proposals for backplane assemblies after receipt of initial proposals was proper where the specifications in the RFP were inadequate and the correct specifications were proprietary.

DECISION

LB&B Associates, Inc. protests the cancellation of request for proposals (RFP) No. N00164-93-R-0138, issued by the Naval Surface Warfare Center Ordnance Station, Louisville, Kentucky, as a total small disadvantaged business set-aside for the purchase of backplane assemblies for the PHALANX Close-In Weapon System.

We deny the protest.

The RFP was issued on May 21, 1993, and contemplated the award of a fixed-price, indefinite quantity contract to the lowest-priced acceptable offer. The successful offeror was to assemble the backplane assemblies in accordance with the instructions and specifications of several drawings referenced in the RFP. On June 18, the RFP was amended to delete one revision of a drawing included in the RFP drawings package and to replace it with the correct revision. The amendment also extended the closing date for the submission of proposals from June 21 to July 6. Six proposals were submitted by the July 6 closing date.

By letters of August 16, the agency advised offerors that the RFP had been canceled due to inadequate specifications. The agency stated that the drawings package and statement failed to clarify two specifications crucial to the operation of the backplane assemblies in the PHALANX system. First, the drawings did not adequately show the routing of the wiring, and this precluded any assurance that the assemblies made in accordance with the drawings would function properly. The agency stated that improper routing of the wiring would induce noise in signal lines producing system errors. Second, the instructions needed for assembly of the backplane frames were not included in the RFP. The agency reports that the failure to have assembly instructions would cause misalignment of the backplanes when attempting to install them in the communication drawers of the PHALANX system. The information necessary for the proper routing and assembly could not be furnished since it was proprietary to EMS of Tustin, California.

LB&B argues that the inadequate specifications that led to the cancellation should have been corrected by amendment so that an award under the RFP could have been made. LB&B also asserts that the agency's cancellation of the RFP was in retaliation for LB&B's challenge to the cancellation of a prior procurement of backplane assemblies.

In negotiated procurements, the contracting officer has broad authority to decide whether to cancel a solicitation and need only establish a reasonable basis for the cancellation. Telestar Int'l Corp., B-247557.2, June 18, 1992, 92-1 CPD ¶ 530. An agency may cancel a solicitation no matter when the information precipitating the cancellation arises, even if it is not until proposals are submitted and offerors have incurred costs in pursuing the award. Brackett Aircraft Radio Co., B-246282, Jan. 8, 1992, 92-1 CPD ¶ 43.

The agency properly canceled the RFP. Because the drawings showing the proper routing of the wiring and the instructions needed for the assembly of the backplane frames were proprietary to EMS, and thus could not be included in the RFP, procurement of acceptable assemblies was impossible under the canceled RFP's specifications. Since the critical information for producing acceptable backplanes was proprietary to EMS, the agency could not correct the RFP's deficiencies. Under such circumstances, the agency had a reasonable basis for deciding that the RFP was defective, that the problems could not be corrected to allow the agency to proceed with the RFP, and that the RFP should be canceled. VSI Corp., Aerospace Group, B-204959, July 30, 1982, 82-2 CPD ¶ 94.

There also is nothing in the record to support LB&B's allegation that the cancellation was motivated by bad faith. The mere fact that proposals had been submitted prior to the agency's discovery of the inadequate specifications in no way establishes bad faith on the agency's part. There is nothing which even suggests that the cancellation was intended to prevent LB&B from receiving the award because of a prior protest filed by LB&B on a previous solicitation. We will not attribute unfair or prejudicial motives to contracting officials on the basis of inference or supposition. See GTE Gov't Sys. Corp., B-222587, Sept. 9, 1986, 86-2 CPD ¶ 276.

The protest is denied.

James F. Kinchman
General Counsel