



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Associated Company, Inc.

File: B-258514

Date: January 24, 1995

W.F. Bowman for the protester,
Vera Meza, Esq., and Robert C. Arendes, Jr., Esq.,
Department of the Army, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protest that agency improperly canceled solicitation after receipt of best and final offers is denied where, during the course of the acquisition, the agency became aware of significant deficiencies in the solicitation's technical data package which created a high risk of unsatisfactory performance on the part of prospective offerors.

DECISION

Associated Company, Inc. protests the cancellation, after receipt of best and final offers (BAFO), of request for proposals (RFP) No. DAAJ09-94-R-0073, issued by the Department of the Army for the fabrication of hover infrared suppression system (HIRSS) core kits.

We deny the protest.

The RFP called for offers to build-to-print a base quantity of 209 HIRSS core kits, with an option quantity of 209 kits. The HIRSS, a defensive countermeasure system deployed on the UH-60 Blackhawk helicopter, is essentially a sophisticated baffle-type device that attaches to the helicopter's exhaust system to reduce its infrared output, thereby reducing the threat from infrared-guided weaponry. The RFP as issued contained a data package comprised of a reproduced copy of the agency's "Spares Technical Data Package." After issuing the original RFP, the agency issued a number of amendments to address numerous technical questions from prospective offerors. The Army received a number of initial offers which, after evaluation, were found to be within the competitive range; the agency then engaged in discussions.

During discussions, one of the offerors expressed concern about the adequacy of the data package. In particular, the firm stated that it did not believe there were sufficient tooling drawings for it to build the specialized tools required to fabricate the HIRSS core kits, and asked the Army whether government-owned tools were available for manufacturing the devices. The Army advised the firm that there would be very limited government-owned tooling available for the successful contractor because almost all of the government-owned tools were currently with another firm--the original equipment manufacturer--under a different contract.¹ Also, at this time, the Army's technical evaluators began to express concern to the contracting officer about the adequacy of the data package. Because these concerns had not been validated by the cognizant engineering support activity, the contracting officer decided to go forward with the acquisition.

After the Army requested and received BAFOs, Associated was determined to be the apparent low-priced offeror, and the contracting officer requested a pre-award survey of the firm. Before conducting this survey, the pre-award survey monitor asked the contracting officer to amend the RFP to include a line item for a first article test report, a requirement inadvertently left out of the solicitation. After issuing an amendment to include this line item, the contracting officer requested a second round of BAFOs; there were no changes in the offers in these second BAFOs.

After receiving the second BAFOs, the contracting officer obtained verified information from the engineering support activity raising doubts as to the adequacy of the data package. Based on the concerns expressed, the contracting officer requested that a risk assessment of contractor performance using the data package be performed. In response to this request, the agency's engineering activity reported significant deficiencies in the data package and, correspondingly, significant potential risk from producing the HIRSS devices using only the data package. In particular, the engineers were concerned that the data package lacked adequate tooling drawings; in many instances, either tooling drawings had never been created by the original equipment manufacturer, or the government did not own technical data rights in the tooling drawings which did exist. The engineering activity concluded that this deficiency would cause an unacceptable risk in the performance of the contract by any prospective awardee.

¹The record also shows that the government does not own a complete set of tools for fabricating the HIRSS devices and that, in some instances, it does not own any technical data rights in the designs for these tools.

Based on this information, the contracting officer canceled the RFP.

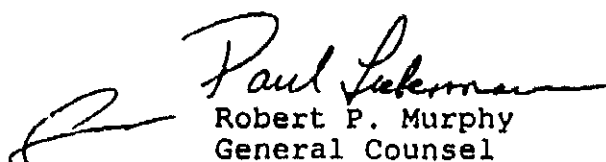
Associated maintains that the agency erred in canceling the RFP because, in its view, the solicitation contained adequate technical information for fabricating the HIRSS core kits. According to the protester, while the data package did not include drawings for the tooling required to build the devices, there was sufficient technical information for it to construct master models of the device, from which it then could fabricate the required tools and production quantities. Associated contends that the agency's technical evaluators were aware of its intended method of fabrication and found it to be technically acceptable.

In a negotiated procurement, the contracting officer has broad authority to decide whether to cancel a solicitation and need only establish a reasonable basis for doing so; the lack of adequate specifications or drawings is one such reasonable basis. LB&B Assocs., Inc., B-254708, Dec. 30, 1993, 93-2 CPD ¶ 346. Further, the fact that the solicitation deficiency giving rise to a cancellation comes to the agency's attention after the receipt of BAFOs does not preclude the agency from relying on that deficiency as a basis for cancellation. Admiral Towing & Barge Co., B-245600; B-245602, Jan. 16, 1992, 92-1 CPD ¶ 83.

Based on the record before our Office, we find nothing objectionable in the Army's decision to cancel this RFP. The HIRSS core kit is a complex device comprised of 12 parts, 5 of which require the use of approximately 690 custom-made tools during fabrication. These tools are necessary because, in constructing the five most complex components, extremely precise contours, spacing, gaps, alignments and tolerances are required, and these tools enable the fabricator to meet all of the various precision requirements. The agency notes further that the data package drawings have different, less precise, measurements than are actually required during the fabrication process because the original equipment manufacturer, during development of the device, altered its tooling to achieve satisfactory production of the device but did not note the changes on the drawings. In sum, the Army's engineering personnel state that fabrication of the devices is controlled by the specialized tooling rather than measurements from the existing drawings in the data package; that the Army does not possess a complete technical data package for all of the required tools; and that any new manufacturer could expect to experience extended delays in attempting to fabricate acceptable master models, produce the required tools and manufacture the production quantities.

Associated has not rebutted the agency's position in its protest comments except to assert, without support, that it is capable of manufacturing the devices using only the currently-available drawings. In view of the agency's explanation regarding the apparent discrepancies between the data package drawings and the various precision measurements that are essentially described by the specialized tooling, we have no basis to accept Associated's unsupported representation.² Under these circumstances, the cancellation is unobjectionable.

The protest is denied.


Robert P. Murphy
General Counsel

²We note that the agency is currently exploring the feasibility of an alternate procurement approach to obtaining these devices. The agency reports that it is considering making a successfully-manufactured HIRSS core unit available to the winning contractor under a subsequent RFP for reverse engineering/disassembly, thereby providing it the information necessary to fabricate the required tooling.