



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mastery Learning Systems

File: B-258277.2

Date: January 27, 1995

Stacey B. Bawtinheimer, Esq., and A. D. Ward, Esq., for the protester.

Geoffrey D. Chun, Esq., Department of the Navy, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Even if personal animus supplied part of an agency's motivation for canceling solicitations, the cancellations are not objectionable where the procuring activity reasonably determined that performing the services in-house was in its best interest because it would assure the continuity of the services.

DECISION

Mastery Learning Systems (MLS) protests the cancellations of request for proposals (RFP) No. N00146-93-R-0053 and request for quotations (RFQ) No. N00146-94-Q-0046, issued by the United States Marine Corps for the operation of a Family Readiness/Key Spouse program at three Marine Corps Air Station sites, and the agency's determination to perform the services in-house. MLS contends that the cancellations lacked a reasonable basis and were motivated by the agency's desires to avoid making an award to MLS and to avoid having our Office render a decision on a previous bid protest filed by MLS.

We deny the protest.

The RFP was issued on August 17, 1993, and was amended eight times. Amendment No. 0007 made a number of substantive changes to the RFP and extended the closing date for proposals to March 16, 1994. MLS submitted the only proposal by the revised closing date. On August 19, the agency issued amendment No. 0008 to the RFP, which among other things, reopened the competition and required that the

successful offeror grant the agency "unlimited rights in all technical data generated, created or delivered under the contract."

The RFQ was issued by the agency on May 17, 1994, to obtain the services on an interim basis. The agency explains that it issued the RFQ because of the delay in procuring the services under the RFP, and because the predecessor contract for the services, held by MLS, had expired on March 31, 1994. The RFQ was amended four times, with quotations being received in response to the RFQ from several firms, including MLS.

On August 24, MLS filed a protest with our Office contending that the agency acted improperly in not awarding a contract to MLS under either the RFP or RFQ. MLS' protest also challenged the propriety of each of the eight amendments to the RFP.

The agency informed our Office on September 16 that it had reevaluated its requirements as set forth in the RFP and the RFQ and had determined that it would perform the services in-house. On September 30, our Office dismissed MLS' protest as academic.

MLS protests that the cancellations of the RFQ and the RFP were improper. Specifically, the protester argues that the agency's cancellation of the solicitations and determination to perform the services in-house were pretexts to avoid our review of MLS' initial protest to our Office and to avoid awarding MLS a contract. In this regard, MLS has submitted a number of affidavits and other evidence, which purport to demonstrate animosity between the president of MLS and personnel serving in the procuring activity's contracting office allegedly leading to prejudice against MLS and improper procurement actions.¹

As a general rule, our Office does not review agency decisions to cancel procurements and instead perform the work in-house, since such decisions are a matter of executive branch policy. Miller, Davis, Marter & Opper, P.C., B-242933.2, Aug. 8, 1991, 91-2 CPD ¶ 176. However, where, as here, a protester argues that the agency's rationale for cancellation is but a pretext--that the agency's actual motivation is to avoid awarding a contract or is in response to the filing of a protest--we will examine the reasonableness of the agency's actions in

¹The parties have introduced considerable evidence pertaining to these allegations.

canceling the procurement. Griffin Servs. Inc., B-237268,2 et al., June 14, 1990, 90-1 CPD ¶ 558, aff'd, General Servs. Admin.--Recon., B-237268,3 et al., Nov. 7, 1990, 90-2 CPD ¶ 369. If there is a reasonable basis for the cancellation, notwithstanding some element of personal animus, we will not object to the cancellation. Dr. Robert J. Telepak, B-247681, June 29, 1992, 92-2 CPD ¶ 4.

Here, the agency explains that it canceled the solicitations because it determined that an in-house capability was both desirable and feasible. In this regard, the agency points to the protracted procurement process, during which the predecessor contract held by MLS expired and the agency was left without the services, as indicating a need for in-house capability that would not be subject to this kind of interruption. The agency states that a number of military activities perform similar services in-house using both government and non-profit sources for information, and that two publications for use in performing these services were issued by the Marine Corps in May 1994.

We think the agency's explanation provides a reasonable basis for the cancellation of the decision. It is obviously important to the Marine Corps to maintain a comprehensive family support system for Marines and their families, and to avoid interruption or disruption to that system. Doing the work in-house, the Marines believe, afford it better protection against disruption of family support services than does contracting out for the services. We have no basis on this record to question this determination. See H. David Feltoon, B-232418, Jan. 5, 1989, 89-1 CPD ¶ 10. Accordingly, the fact that there may have been some personal animus on the part of the agency does not provide a basis to conclude that the cancellations were improper.

Finally, while the protester argues that the agency's decision to perform the services in-house is unreasonable because the agency failed to conduct a cost comparison to measure the relative costs of in-house versus contractor performance of the services, there is no requirement that an agency's decision to perform services in-house be based on the results of a cost comparison. H. David Feltoon, supra.

The protest is denied.


 For Robert P. Murphy
 General Counsel