



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Walker Development & Trading Group, Inc.

File: B-414453

Date: June 21, 2017

Terrance Walker, Walker Development & Trading Group, Inc., for the protester.
Daniel J. McFeely, Esq., Department of Veterans Affairs, for the agency.
Katherine I. Riback, Esq., and Amy B. Pereira, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest objecting to proposed corrective action taken in response to earlier protest is denied where agency reasonably decided not to reinstate its prior solicitation after determining that the previous solicitation did not accurately reflect its requirements, and instead issued a new solicitation that correctly stated the agency requirements.

DECISION

Walker Development & Trading Group, Inc. of Reno, Nevada, a small business, protests the corrective action taken in connection with request for quotations (RFQ) No. VA262-17-Q-0420 issued by the U.S. Department of Veterans Affairs (VA) to provide laundry services to VA medical facilities located in Los Angeles, Long Beach, and Loma Linda, California.

We deny the protest.

BACKGROUND

On June 10, 2016, the VA issued RFQ No. VA262-16-Q-0766 (“-0766”) for laundry services for the Los Angeles, Long Beach, and Loma Linda VA hospitals as a commercial item acquisition. The RFQ anticipated the award of an indefinite-delivery/indefinite-quantity (ID/IQ), fixed-priced contract for a base year and four 1-year options. Quotations were to be evaluated considering price and technical acceptability. RFQ No. 0766 at 89. The solicitation stated that award would be made to the lowest-priced, technically acceptable vendor. Id.

After the closing date for receipt of quotations, the agency reopened the solicitation on September 1, amended the solicitation to increase the maximum award amount, and set a due date for revised quotations of September 13. Walker submitted a timely revised quotation.

On October 3, the protester received a notice that the agency cancelled the solicitation. B-413924 Protest, Tab 3, Agency Cancellation Notice (Oct. 3, 2016). On September 30, the same contracting activity stated that it was exercising its rights under Federal Acquisition Regulation (FAR) clause 52.217-8, option to extend services, to extend its contract with Railroad Cleaners to continue procuring these services. RFQ 0766 at 41; B-413924 Protest, Tab 2, Award Notice to Railroad Cleaners (Sept. 30, 2016).

After receiving the agency's notice of cancellation of the RFQ, and subsequent award to Railroad Cleaners, Walker filed a protest with our Office protesting the cancellation of the RFQ.¹ Our Office sustained the protest finding that the agency "failed to produce an agency report that coherently addressed the agency's rationale for cancellation of the solicitation."² Walker Dev. & Trading Group, Inc., B-413924, Jan. 12, 2017 CPD ¶ 5 at 6. Our decision recommended that the agency, "if feasible, re-instat[e] the solicitation." Id. at 6.

Following receipt of our decision sustaining Walker's protest, the agency conducted an investigation to determine if it was feasible to amend and reinstate RFQ No. 0766. Agency Report (AR) at 2; Tab 5, Contracting Officer's Determination to Issue a New Solicitation. For a number of reasons the contracting officer determined that it was not feasible to amend and reinstate the cancelled solicitation. Specifically, the contracting officer determined that the nature of the changes required to address the flaws with the cancelled solicitation were so substantial that they exceeded what prospective vendors reasonably could have anticipated. As a result, the contracting officer determined that additional firms likely would have submitted quotations had the substance of the subsequent changes been known to them. Id. at 3.

The contracting officer concluded that, because of the flaws in the cancelled solicitation, the "only way to provide [a] fair opportunity for all potential [vendors], both those who responded to the previous RFQ and those who may not have submitted [quotations]," was to issue a new solicitation that corrected these flaws and presented a more realistic summary of the laundry requirements of the VA facilities in Los Angeles, Loma Linda,

¹ Walker's protest included its proposed price. Walker did not file a redacted version of its protest.

² Our Office also found, as part of its basis for sustaining the protest, that the agency failed to demonstrate that it had a reasonable basis for extending the period of performance for the contract to Railroad Cleaners. Walker Dev. & Trading Group, Inc., B-413924, Jan. 12, 2017 CPD ¶ 5 at 6.

and Long Beach. Id. To this end, on March 10, 2017, the agency issued RFQ No. VA262-17-Q-0420 (-0420), as a set-aside for small business concerns and sought quotations for an ID/IQ contract to provide laundry services to VA medical facilities in Los Angeles, Long Beach, and Loma Linda. RFQ No. 0420; AR at 2. This protest to our Office followed.

DISCUSSION

Walker asserts that the VA's decision not to reinstate the initial RFQ (-0766) and instead to issue RFQ No. 0420 was improper and did not implement our recommendation in Walker Dev. & Trading Group, Inc., B-413924.³ Walker requests that we again recommend that the agency reinstate the initial solicitation (-0766). Protest at 4. The protester contends further that the agency's decision not to reinstate the prior solicitation was unreasonable because the changes to the amount and type of laundry to be considered under this solicitation "were simply clarifications," and that the original solicitation already put vendors on notice that there may be changes to the requirements. Comments at 18. Walker also argues that it was prejudiced by the agency's re-solicitation of the requirement because its price and competitive position were exposed in its protest and our previous decision in Walker Dev. & Trading Group, Inc., B-413924.⁴ Supp. Protest at 1; Comments at 16.

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure a fair and impartial competition. Greentree Transp. Co., Inc., B-403556.2, Dec. 10, 2010, 2010 CPD ¶ 293 at 2. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. See American Sys. Corp., B-412501.2, B-412501.3, Mar. 18, 2016, 2016 CPD ¶ 91 at 5. Where an agency's proposed corrective action goes beyond what our Office originally may have recommended in connection with sustaining a protest, the agency's decision to pursue such a course of action does not, by itself, provide a basis for protest, absent some showing that the agency's actions are contrary to procurement law or regulation, or otherwise are improper. See C2C Solutions, Inc.; Trust Solutions, LLC, B-401106.6, B-401106.7, June 21, 2010,

³ Walker's protest raised numerous allegations. While our decision here does not specifically discuss each and every argument, we have considered all of the protester's assertions and find none furnish a basis for sustaining the protest.

⁴ The protester also argued that the VA failed to set aside the solicitation for small business and that the agency did not allow 30 days until quotations were due. Protest at 4-5. The VA provided a response to these issues in its report on the protest, AR at 11-12, and Walker did not address these issues in its comments on the agency report. Thus, we find that the protester abandoned these issues. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

2010 CPD ¶ 145 at 3; see also NavCom Defense Elecs., Inc., B-276163.3, Oct. 31, 1997, 97-2 CPD ¶ 126 at 3.

In a negotiated procurement, such as this one, a contracting agency has broad discretion in deciding whether to cancel a solicitation, and need only establish a reasonable basis for doing so. SupplyCore Inc., B-411015.8, May 27, 2016 CPD ¶ 153 at 3. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. American Sys. Corp., supra at 6. An agency may cancel a solicitation regardless of when the information precipitating the cancellation first arises, even if it is after proposals have been submitted and evaluated, or if it is discovered during the course of a protest. SupplyCore Inc., supra; see American Sys. Corp., supra.

Here, the agency argues that its decision not to reinstate the solicitation was reasonable. We agree. The agency notes that the corrective action that our Office recommended in our decision sustaining Walker's protest was that the agency, "if feasible," reinstate the solicitation. AR at 5 citing Walker Dev. & Trading Group, Inc., supra, at 6. According to the agency, it considered reinstating the solicitation but determined that the nature of the changes required to address the solicitation flaws were so substantial as to exceed what prospective vendors reasonably could anticipate. Therefore the agency determined that "the only way to provide [a] fair opportunity" to all vendors, those that responded to the previous RFQ, and those who may not have submitted quotations due to the solicitation flaws, was to issue a new solicitation. AR, Tab 5, Contracting Officer's Determination to Issue a New Solicitation, at 3.

First, in reaching this decision, the contracting officer determined that the original (-0766) solicitation incorrectly specified a guaranteed minimum contract award amount of \$1 million. RFQ No. 0766 at 348⁵; AR at 6. The agency also determined that the guaranteed minimum figure did not represent accurately the expected demand for laundry services that the agency would require from each awardee. AR, Tab 5, Contracting Officer's Determination to Issue a New Solicitation, at 3. The contracting officer also found that the correct requirement for the guaranteed minimum contract award amount was \$1,000. Id. The contracting officer determined that the change from a \$1 million guaranteed minimum contract award amount to a \$1,000 guaranteed minimum contract award amount was so substantial as to exceed what prospective vendors reasonably could have anticipated. Id.

Second, the contracting officer determined that the original (-0766) solicitation did not properly describe the contract requirements for laundry services for the locations to be serviced. Specifically, section 1.2.1 of the performance work statement for the original (-0766) solicitation states that vendors are to provide daily laundry services for the VA medical facility located in Los Angeles. RFQ No. 0766 at 338. The contracting officer

⁵ Page citations to certain documents in the agency report are to the Bates numbers provided by the VA.

explained that the services for the VA facilities in Los Angeles and Long Beach are only required on an as needed basis, because the VA facility in Los Angeles has a government owned/operated laundry facility that services the VA facilities in Los Angeles and Long Beach. AR, Tab 5, Contracting Officer's Determination to Issue a New Solicitation, at 2. The contracting officer stated that new information concerning a lower demand for laundry services in the VA facilities in Los Angeles and Long Beach may discourage one or more of the original vendors, and at the same time may result in quotations from small businesses that had not participated in the previous procurement. The contracting officer concluded that this change in demand for contract services was a "material change" in the original solicitation that could only be corrected by issuing a new solicitation and affording all potential vendors, including those that provided quotations to the original solicitation, the opportunity to compete. Id.

Finally, the contracting officer stated as well that the solicitation did not accurately describe the laundry services required for each VA facility. For example, the original solicitation showed the VA facility in Loma Linda requiring all five of the laundry categories, while in fact that facility only requires laundering of items from category one, which consists mainly of bed linens, patient pajamas, and scrubs. RFQ No. 0766 at 441-443; AR, Tab 5, Contracting Officer's Determination to Issue a New Solicitation, at 2. The contracting officer explained that potential vendors may have the capability to provide laundry services for category one items only, but not the remaining four categories, which consist of heavier duty items, including patient lifting slings, jackets, coveralls, curtains, and mops. As a result, the agency may have received more quotations for services at the Loma Linda VA facility had these potential vendors known of the reduced requirements for different types of laundry services. Id.⁶

We find that the agency's rationale for deciding not to reinstate the solicitation is reasonable. Our Office has consistently explained that an agency may cancel a solicitation when the agency determines that the solicitation does not accurately reflect its needs. American Sys. Corp., supra, at 6; SupplyCore Inc., supra, at 5; AeroSage LLC, B-410648.2, B-410648.3, Mar. 20, 2015, 2015 CPD ¶ 111 at 3; Zegler, LLC, B-410877, B-410983, Mar. 4, 2015, 2015 CPD ¶ 168 at 3. Given the fact that the

⁶ The contracting officer also explained that the announcement of the original solicitation did not accurately describe the locations where the laundry services were to be provided. AR at 10. The title of the acquisition on the FebBizOpps website was "S-Loma Linda Laundry Services." AR, Tab 9, FBO Web Page re: RFQ No. 0766. This title did not alert vendors to the opportunities to provide laundry services in the VA facilities in Los Angeles and Long Beach. The contracting officer contends that there was a "strong possibility" that there were potential vendors capable of providing laundry services to the VA facilities in Los Angeles and Long Beach that disregarded this posting because they had no interest or capability of providing laundry services in the Loma Linda area. AR, Tab 5, Contracting Officer's Determination to Issue a New Solicitation, at 1.

amount and type of laundry services to be provided under the contract were not accurate in the solicitation, as well as the fact that the RFQ included the incorrect guaranteed minimum contract award amount, the agency reasonably concluded that it had failed to adequately convey its requirements to the vendors in a manner that would allow them to compete intelligently, and on a relatively equal basis.

Regarding the appropriateness of the agency's corrective action, the protester requests that we recommend that the agency reinstate the original solicitation (-0766). Protest at 4. Given the agency's reasonable determination that the initial solicitation failed to adequately convey the agency's requirements in a manner that would allow vendors to compete intelligently, and on a relatively equal basis, it follows that we have no basis to question the agency's decision not to reinstate RFQ No. 0766 and to instead issue RFQ No. 0420.

We also find that the record does not support Walker's allegation that it was prejudiced by the agency's re-solicitation of the requirement because its price and competitive position were disclosed.⁷ Supp. Protest at 1. While Walker included its proposed price in its initial protest, the agency states that the original solicitation (-0766) was cancelled before an award announcement was made, and that it did not make a disclosure of any vendor's unit or aggregate prices to other actual or prospective vendors, so, therefore, no vendor was placed at a competitive advantage as a result of the issuance of a new solicitation. AR at 14. The agency also states that even if a firm was able to divine Walker's pricing information from the previous solicitation, this information would not provide a competitive advantage to firms responding to the current solicitation due to the material changes to the solicitation requirements described above. AR at 3. In short, we find that the protester has presented no support for its claim that its price was disclosed, and its unsubstantiated speculation does not provide a valid basis of protest. Chameleon Integrated Servs., B-407018.3, B-407018.4, Feb. 15, 2013, 2013 CPD ¶ 61 at 4-5. We further find that, based on the changes in the solicitation, and the limited information that was published regarding Walker's competitive position, that there is no basis upon which to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel

⁷ Our decision in Walker Dev. & Trading Group, Inc., B-413924 stated Walker's competitive position and that its proposed price was below the guaranteed minimum contract amount, but did not disclose its proposed price.