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United States General Accounting Office  
Washington, DC 20548

Comptroller General  
of the United States

## Decision

**Matter of:** A-Tek, Inc.

**File:** B-286967

**Date:** March 22, 2001

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Debra A. Mays for the protester.

Vickie R. Shaw, Esq., Department of the Treasury, 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.

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### DIGEST

Agency's cancellation of a solicitation for an uninterruptible power supply system is reasonable where the solicitation was ambiguous and/or overstated the agency's minimum needs.

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### DECISION

A-Tek, Inc. protests the cancellation of request for proposals (RFP) No. CS-I-00-013, issued by the Customs Service, Department of the Treasury, for replacement of the uninterruptible power supply (UPS) service to the Newington Data Center, Newington, Virginia.

We deny the protest.

The agency issued the RFP for the installation and support of the UPS service for 5 years from the date of contract award. RFP attach. A, statement of work (SOW), at 1. The RFP provided for the award of a fixed-price contract to the offeror submitting the proposal representing the best overall value to the government, considering certain designated evaluation criteria. The agency received and evaluated proposals and revised proposals,<sup>1</sup> and determined that the proposal submitted by Commercial Air, Power & Cable, Inc. represented the best value to the government.

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<sup>1</sup> Revised proposals were requested because of requirements added by an amendment to the RFP.

After receiving a debriefing on October 5, A-Tek filed a protest with the agency, contending that the agency's evaluation of its proposal and selection of Commercial Air's proposal for award were unreasonable. A-Tek specifically argued in its agency-level protest that all of the proposals received, other than A-Tek's, should have been rejected as technically unacceptable because they did not offer to complete the installation of the system within 45 days of contract award as A-Tek claimed was required by the solicitation. Agency Report (AR), Tab V, Agency-Level Protest (Oct. 10, 2000).

The agency found, after reviewing A-Tek's protest, that the proposals had not been properly evaluated, and that the RFP was ambiguous as to whether the installation of the system had to be completed within 45 days of contract award. Agency Legal Memorandum at 2. The agency also concluded that the evaluation factors set forth in the solicitation required revision, and that a more detailed SOW was needed. *Id.*; Contracting Specialist's Statement at 4. Accordingly, the agency informed A-Tek by letter dated November 17 that "[a]fter a rather extensive agency review, [the agency has] decided that the acquisition should be resolicited to clarify certain specification requirements, including the time limits for performance." AR, Tab V, Agency Letter to A-Tek (Nov. 17, 2000).

A-Tek then filed another protest with the agency, challenging the agency's cancellation of the solicitation and the evaluation of the proposals. In this protest, A-Tek also asserted for the first time that during the conduct of the procurement, the contracting specialist had improperly disclosed A-Tek's "strategy" to Commercial Air. AR, Tab V, Agency-Level Protest (Nov. 20, 2000).

The agency subsequently informed A-Tek that the agency had determined "that portions of the solicitation and specification were ambiguous and deficient" and as a result the "specification will be rewritten to provide more clarity relative to the specific requirements of the [agency]." AR, Tab V, Agency Letter to A-Tek (Dec. 4, 2000).

A-Tek filed this protest with our Office on December 14, arguing that the agency's evaluation of proposals and selection of Commercial Air's proposal for award were unreasonable, and that the agency's subsequent cancellation of the solicitation was improper. The protester also contended that the agency improperly disclosed its "unique performance strategy [to] other offerors."

A procuring agency may reject all proposals (even if technically acceptable) received in response to a solicitation if cancellation is clearly in the government's best interests. Federal Acquisition Regulation § 15.608(b)(4); Tender Loving Care Ambulance & Ambulette Co., Inc., B-271571.2, June 17, 1997, 97-2 CPD ¶ 25 at 2. In a negotiated procurement such as this one, the contacting agency has broad discretion in deciding whether to cancel a solicitation and need only establish a reasonable basis for doing so. Tender Loving Care Ambulance & Ambulette Co., Inc., *supra*. A reasonable basis exists when, for example, a solicitation is ambiguous, or where it

overstates the agency's minimum needs, such that the cancellation of the solicitation and issuance of a revised solicitation would present the potential for increased competition or costs savings. Chant Eng'g Co., Inc., B-270149.2, Feb. 14, 1996, 96-1 CPD ¶ 96 at 2.

The agency explains that it became concerned during the conduct of the procurement that the drawings included in the amended RFP "were very old," and realized after receipt of revised proposals "that the solicitation and evaluation process should have been clearer and more precise." Contracting Specialist's Statement at 1, 4. In this regard, the agency reports that it intends to obtain the services of an architect and engineering contractor to aid in the development of "a more detailed specification/SOW" and revised "source selection criteria." Id. at 4.

The agency adds that during its consideration of A-Tek's initial agency-level protest, it realized that the evaluation factors set forth in the RFP were inconsistent with certain aspects of the SOW, and that the solicitation may have been ambiguous regarding the time allowed for installation of the UPS system. Specifically, as mentioned previously, A-Tek clearly felt that the requirement set forth in the solicitation as initially issued that "[t]he equipment shall be installed, tested and accepted within 45 calendar days after Contract award" remained, whereas the agency (as well as certain of the other offerors) believed that the 45-day installation requirement had been effectively deleted by amendment No. 0001 to the RFP. RFP attach. A, at 2; amend. No. 0001, attach. A, at 2. The agency explains here that the 45-day installation requirement exceeds its minimum needs, and that had the solicitation been clear in this regard, the agency may have received offers from firms who were "unable to meet the 45-day deadline." Agency Legal Memorandum at 7. The agency points out that it received a letter from a firm that had been interested in competing for the contract but had not submitted a proposal because of "the time frame required to complete [the] project." Id.; AR, Tab X. The agency adds that the solicitation's ambiguity in this regard may have also caused certain of the offers to have been higher priced than they would have been had the solicitation, as amended, clearly provided that the 45-day installation requirement was no longer applicable. Agency Legal Memorandum at 7.

The protester does not substantively challenge the agency's position that the solicitation's SOW and source selection criteria should have been clearer, and based upon this record, we have no reason to find the agency's view here objectionable. More importantly, the record reflects that the solicitation was either ambiguous with regard to the time allowed for installation of the UPS system, or overstated the agency's minimum needs by continuing to mandate a 45-day installation period, and that the agency may obtain enhanced competition by amending the solicitation to clearly reflect its needs in this regard. Accordingly, we find that the agency's decision to cancel the solicitation to revise the source selection criteria and

specifications to better reflect the agency's actual requirements, and seek enhanced competition, was reasonable.<sup>2</sup>

The protester's contention that the agency improperly disclosed A-Tek's proprietary "strategy" is untimely and will not be considered. Specifically, the record reflects that the protester was aware of the facts underlying this contention by August 20. Protester's Written Statement at 1-2 (Feb. 22, 2001). At the latest, this aspect of A-Tek's protest should have been raised within 10 days of A-Tek's October 5 debriefing. However, A-Tek did not raise this issue with the agency until it filed its second agency-level protest on November 20. Because this issue was not raised by A-Tek in a timely manner with the agency, A-Tek's subsequent protest to our Office contending that the agency improperly disclosed A-Tek's "strategy" is untimely. 4 C.F.R. § 21.2(a)(3) (2000).

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>2</sup> In light of our conclusion that the agency had a reasonable basis to cancel the solicitation, the protester's contention that the agency's evaluation of proposals was unreasonable is academic and will not be considered.