



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Telestar International Corporation

File: B-247557.2

Date: June 18, 1992

Frank Liu for the protester.

Charles J. McManus, Esq., Douglas P. Larson, Jr., Esq., and Theresa M. McKenna, Esq., Department of the Navy, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's cancellation of request for proposals was effected in order to circumvent certificate of competency procedures is denied where the contracting officer reasonably determined that the solicitation should be canceled because of a reallocation of funds, and there is nothing in the record to support the allegation of bad faith.

DECISION

Telestar International Corporation protests the actions of the Department of the Navy, concerning request for proposals (RFP) No. NOO123-91-R-0199, for non-crystal controlled oscillators.

Telestar contends that after it was found nonresponsible by the Navy, despite the Navy's assurance that the matter had been referred to the Small Business Administration (SBA) for certificate of competency (COC) consideration, Telestar never heard from the SBA, and does not believe that "the Navy truly forwarded our case to the SBA." Under these circumstances, Telestar suggests that the subsequent cancellation of the RFP was effected by the contracting officer in bad faith in order to circumvent the COC process.

We deny the protest.

The RFP, a small business set-aside, was issued on July 5, 1991, and contemplated the award of an indefinite delivery, indefinite quantity contract. Six offers, including Telestar's, were received and discussions were conducted

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with all six offerors. Best and final offers (BAFOs) were due on September 17. Electrodyne Systems submitted the low price BAFO; Telestar's was second low. The contracting officer requested preaward surveys for both Electrodyne and Telestar by the Defense Contract Management Area, Ontario. Telestar received a negative preaward survey report dated October 24; Electrodyne received a negative preaward survey report dated November 13. The contracting officer, in an attempt to expedite the award process, referred Telestar's nonresponsibility determination to the SBA for the possible issuance of a COC by letter dated November 5 and, similarly, referred Electrodyne's nonresponsibility determination to the SBA by letter dated November 19.

By letter dated November 8, the SBA declined to proceed with the request concerning Telestar because Telestar was not the low offeror.¹

Because the acceptance period of 120 days was about to expire, and because the agency had not yet received the SBA determination on Electrodyne, by letter dated January 14 the agency asked offerors to extend their offers. By letter dated January 30, the user activity, the Naval Air Weapons Center-Weapons Division, stated that it had reviewed its program requirements and "shifted priority and financial resources from the subject procurement to other more vital concerns," and therefore requested cancellation of the procurement on the basis of insufficient funding. Accordingly, by letter dated February 11, the Navy canceled the solicitation, prior to receipt of an SBA determination on the Electrodyne COC referral.

Telestar argues that the record suggests that the Navy canceled the solicitation in bad faith. Telestar contends that the Navy delayed in referring Electrodyne's nonresponsibility determination to the SBA, pointing out that the contracting officer did not request a COC determination from the SBA on Electrodyne until November 19. Telestar also states that in its experience with the COC process, the SBA has issued its determination on a COC within 3 weeks of receiving the request, while here there is an unexplained 2-1/2-month delay on Electrodyne's COC determination. Finally, Telestar points out that, as late as January 14, the contracting officer requested extension of offers, yet the agency canceled the solicitation

¹Under Federal Acquisition Regulation (FAR) § 19.602-1(d), for any single acquisition, the contracting officer shall make only one referral at a time to the SBA regarding a determination of responsibility.

approximately 1 month later. Telestar argues that these delays and the timing of the cancellation suggest that the agency was misleading the firm and canceled the solicitation as a means to circumvent the COC process.

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 the cancellation. Source AV, Inc., B-241155, Jan. 25, 1991, 91-1 CPD ¶ 75; Cantu Servs., Inc., B-219998.9; B-233697, Mar. 27, 1989, 89-1 CPD ¶ 306.

Here, there is nothing in the record which suggests that the cancellation was based on anything other than the shift in priorities and the resulting fund reallocation cited by the Navy, which provides a reasonable basis for cancellation. Kato/Intermountain Elec., A Joint Venture, B-245807; B-245925, Jan. 30, 1992, 92-1 CPD ¶ 129. The Navy reports that, as a result of budget reductions, it determined that the "funds earmarked for the oscillators would be better spent on other critical modules for the ULQ-21 program" and that those funds were used "to procure additional 100 watt Traveling Wave Tube amplifiers and RF Synthesizers that were critically needed for Fleet deployment."

While Telestar surmises that the timing of the cancellation, coming after what Telestar perceives as unusual delays, suggests bad faith on the part of contracting officials, there is no evidence to support this claim. To show bad faith, a protester must submit essentially irrefutable proof that the contracting agency directed its actions with the specific and malicious intent to injure the protester. H. David Feltoon, B-232418, Jan. 5, 1989, 89-1 CPD ¶ 10. The fact that the agency requested that offerors extend their offers before subsequently canceling the solicitation is no evidence of bad faith. As the agency explains, the request resulted because the acceptance period would have expired before the agency could make an award; the decision to cancel was made later. Further, while Telestar argues that the agency delayed in referring Electrodyne's nonresponsibility determination to the SBA, the record shows that this referral was made to the SBA only 4 working days after the date of the negative preaward survey report on Electrodyne. The fact that the cancellation occurred after the preaward survey was conducted but before a COC

determination by the SBA is not, by itself, evidence of bad faith since an agency properly may cancel a solicitation no matter when the information precipitating the cancellation arises. Source AV, Inc., supra.

The protest is denied.



for James F. Hinchman
General Counsel