



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AT&T

File: B-251177; B-251177.2

Date: March 16, 1993

Eloisa Regalado, Esq., for the protester.
Michael Colvin, Department of Health & Human Services, for
the agency.
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest that agency improperly canceled request for proposals (RFP) for an integrated voice/data telecommunications system and an interactive voice response subsystem and then purchased a simple private branch exchange telephone system is denied where contracting officer reasonably determined that the RFP should be canceled because proposed prices received under RFP greatly exceeded available funds and, therefore, agency had to reduce its requirements significantly.

DECISION

AT&T protests the Public Health Service's (PHS) cancellation of request for proposals (RFP) No. 284-R-92-0011 for an integrated voice/data telecommunications system and award of a contract for a private branch exchange (PBX) switch to WilTel Communications Systems, Inc. AT&T contends that PHS improperly placed an order against WilTel's contract with the General Services Administration (GSA) for providing telecommunications equipment and related services, rather than incurring the delays associated with completing the negotiated procurement, in order to avoid losing the funds at the end of the fiscal year. We deny the protest.

Issued on August 21, 1992, the RFP requested proposals for an integrated voice/data telecommunications system for the PHS Supply Service Facility at Perry Point, Maryland. The

RFP stated that the contract would be for a "single turnkey vendor" to provide a complete, operational, state-of-the-art, integrated voice/data telecommunications system. The RFP also sought offers for an interactive voice response subsystem to replace the Supply Service Facility's Phone Entry Computer Ordering System (PECOS).

Two of the three proposals received by the September 22 closing date for receipt of initial proposals were determined to be technically acceptable. However, PHS' cost/price evaluation revealed that all three proposals greatly exceeded the government estimate of \$121,781. For example, AT&T's proposed system was offered at a total price of \$579,802, and the lowest priced offer was for a total of \$153,589. Furthermore, PHS' delegation of procurement authority to the Supply Service Facility was conditioned upon: (1) expenditure of only \$60,000 in fiscal year 1992 funds and a total of only \$121,781 over the next 10 years for this project and (2) the award of a contract by September 30. The PHS technical evaluator advised the contracting officer that all proposals offered telecommunications systems that were far more extensive and complex than required to meet the RFP's specifications.

PHS contracting officials decided that due to the time constraint imposed in the delegation of procurement authority, and because all proposed systems were much more complex and expensive than what was needed to meet the Supply Service Facility's needs, it was not in the government's interest to negotiate with any of the three offerors. The contracting officer determined that the RFP should be canceled and GSA telecommunications schedules surveyed to find out if telephone equipment meeting the Supply Service Facility's needs could be purchased from a GSA-scheduled contractor.

PHS' technical evaluator advised the contracting officer that telephone equipment available under GSA's purchase of telephones systems (POTS) region I contract would meet the government's needs. The evaluator examined schedule 58 of GSA's POTS contract, including both AT&T's Definity G-1 and WilTel's Meridian Option 11 telephone systems, and advised the contracting officer that PHS' telecommunications needs could best be met by purchasing from that schedule. The contracting officer and technical adviser determined that WilTel's Meridian Option 11 system represented a savings of 15-20 percent over AT&T's Definity G-1 and other systems listed on schedule 58. Therefore, on September 30, 1992, the contracting officer placed a delivery order against

WilTel's GSA schedule 58 contract for the Meridian Option 11 system. AT&T filed its initial protest in our Office on October 30.¹

By letter of October 15, AT&T was notified that its proposal was considered to be out of the competitive range and that no award had been made under RFP No. 284-R-92-0011. In an October 16 telephone call, a contract specialist informed AT&T that a contract had been awarded to WilTel under the GSA schedule.

In its initial protest letter, AT&T argued that the award to WilTel was improper because it was based on the potential loss of funds that would have occurred at the end of the fiscal year. AT&T also asserted that the award to WilTel represented a de facto cancellation of the RFP without justifiable reason; it further asserted that the RFP was canceled in bad faith, entitling AT&T to its proposal preparation costs. AT&T also added two protest allegations later, which we dismiss as untimely.²

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. Telestar Int'l Corp., B-247557.2, June 18, 1992, 92-1 CPD ¶ 530. An agency may cancel a solicitation no matter when the information precipitating the cancellation arises, even if it is not until proposals are submitted and offerors have incurred costs in pursuing the award. Brackett Aircraft Radio Co., B-246282, Jan. 8, 1992, 92-1 CPD ¶ 43.

Here, the record shows that PHS had authorized only \$60,000 in fiscal year 1992 funds and a total of \$121,781 to be spent to replace the Supply Service Facility's telephone and PECOS systems. Upon receipt of initial proposals, it was very clear that the agency was not going to be able to award a contract to a "single turnkey vendor" that would provide

¹The new telephone system was installed by WilTel on November 13.

²AT&T also complained that the cancellation was improper because AT&T never received formal notification from PHS that the RFP was canceled. However, in view of the telephone notification, failure to provide a written notification of cancellation is at most a procedural deficiency providing no basis to sustain the protest. See Adrian Supply Co., B-241502 et al., Feb. 7, 1991, 91-1 CPD ¶ 138; Adrian Supply Co., B-240871 et al., Dec. 21, 1990, 90-2 CPD ¶ 515.

all of the equipment and services specified in the RFP within the funding limitation. Regardless of whether the RFP overstated the Supply Service Facility's actual needs as AT&T has suggested, PHS contracting officials properly determined that there was not enough money available to purchase all of the equipment and services they initially desired.

PHS contracting officials reassessed the situation and determined that their most important priority was to replace the Supply Service Center's 14-year old telephone system. The record shows that, among other things, the old telephone system was inadequate because it: (1) contained no surge or "brownout" protection; (2) was no longer being manufactured and spare parts would be increasingly difficult to acquire; and, most significantly, (3) was being used at capacity and had only limited expansion capability. Accordingly, PHS officials decided to spend their limited amount of funds to obtain a new telephone system--but not to replace the PECOS subsystem--before the funds expired. Also, as AT&T points out, PHS officials determined that, in view of the high priced offers received and the limited funding available, it was necessary to forgo many of the desired features originally requested in the RFP.

In these circumstances, we find that the contracting officer's decision to cancel the original RFP was proper. A contracting officer may properly cancel a solicitation where a lack of funds requires the agency to reassess its minimum needs and reduce its requirements significantly. See Cantu Servs., Inc., B-219998.9; B-233697, Mar. 27, 1989, 89-1 CPD ¶ 306. Here, AT&T quoted a total price of \$579,802 in its initial proposal, which significantly exceeded the funds available for the procurement; what was offered was also viewed as far more complex and expensive than needed to meet agency needs. Since the agency reassessed its needs and found that they could be satisfied by less complex equipment available from existing GSA schedule contractors, we believe that the contracting officer's decision to cancel the RFP and to purchase a simpler, cheaper telephone system under a GSA POTS contract was reasonable. Id.; Brackett Aircraft

Radio Co., supra. We also find nothing in the record to support the bad faith allegation. Thus, while AT&T may have incurred proposal preparation costs in pursuing award under the RFP, there is no basis for it to recover those costs here since we find the cancellation to be proper.³ See Cantu Servs., Inc., supra; Hac Corp., B-235136, July 20, 1999, 89-2 CPD ¶ 68.

We also find no legal merit to AT&T's argument regarding the role of the prospective loss of funds in PHS's decision to cancel the RFP. Once the agency recognized that it could not purchase the telecommunications system described in the RFP, it was required to reopen the competition. In deciding to meet its needs through the GSA POTS contract rather than issuing a new RFP or amending the existing RFP and reopening the competition, PHS apparently was motivated, at least in part, by the approaching end of the fiscal year. Since PHS was otherwise warranted in canceling an RFP that no longer described the agency's needs, the fact that PHS also desired to use fiscal year 1992 funds provides no grounds for us to object. PHS may not enter into a contract on the basis of other than full and open competition because of concerns related to available funding. 41 U.S.C. § 253f(5)(A) (1988); Federal Acquisition Regulation (FAR) § 7.103. The award to WilTel, however, was not a noncompetitive one; the law treats orders issued pursuant to GSA multiple award schedules as competitive. 41 U.S.C. § 259(b)(3); FAR § 6.102(d)(3).

AT&T's later contentions are that the issuance of a delivery order to WilTel was improper because (1) PHS did not synopsize the order in the Commerce Business Daily and (2) PHS erroneously compared WilTel's Meridian Option 11 system to AT&T's Definity G-1 system instead of AT&T's Legend control unit which would have performed the exact functions of the WilTel system at potential savings to the government.

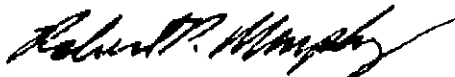
Where a protester initially files a timely protest and later supplements it with new and independent bases for protest, the later raised allegations must independently satisfy the timeliness requirements of our Bid Protest Regulations, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. See Remtech, Inc., E-240402.5, Jan. 4, 1991, 91-1 CPD ¶ 35. Under our Regulations, 4 C.F.R. § 21.2(a)(2) (1992), AT&T

³Even if we were to agree with the protester that the agency negligently prepared government specifications which overstated its needs, mere negligence or lack of due diligence by the agency does not provide a sufficient basis for the recovery of proposal preparation costs. Special Sys. Serv., Inc., B-238168, Apr. 4, 1990, 90-1 CPD ¶ 359.

had to file these protest issues not later than 10 working days after it knew, or should have known, of these grounds for protest.

AT&T knew as early as the October 16, 1992, telephone conversation with the contract specialist that an award had been made to WilTel pursuant to a GSA schedule contract. Furthermore, the agency report on the initial protest specifically stated that PHS had compared WilTel's Meridian system to AT&T's Definity G-1 system under schedule 58 of the POTS contract, and PHS advised us that its report was telecopied to AT&T on December 11. However, AT&T did not raise these protest issues until December 29, more than 10 working days later. Therefore, these issues are untimely.

The protest is denied.


for James F. Hinchman
General Counsel