



Comptroller General
of the United States

Washington, D.C. 20548

154544

Decision

Matter of: JRW Management Company, Inc.

File: B-260396.2

Date: June 16, 1995

S. Gregory Joy, Esq., Smith, Currie & Hancock, for the protester.

Capt. Joseph E. Cazenavette, Department of the Air Force, for the agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly canceled solicitation and recompeted requirement for shuttle bus services where: (1) only one offer was received in response to original solicitation and that offeror failed to demonstrate that its price was fair and reasonable; and (2) during course of price discussions with sole offeror, agency discovered its minimum needs could be satisfied with alternative approach which presented reasonable possibility of increased competition and cost savings to the government.

2. Protest that agency violated applicable synopsis and time period requirements in Federal Acquisition Regulation is denied where procurement is being conducted on an urgent and compelling basis and thus is exempt from these requirements, and, in any event, the protester has not shown how these alleged solicitation improprieties resulted in any competitive prejudice to the protester.

3. Protest alleging that solicitation contains ambiguous terms is denied where plain language of specifications provide only one reasonable interpretation.

DECISION

JRW Management Company, Inc. protests the cancellation of request for proposals (RFP) No. F41636-94-R-0320, issued by the Department of the Air Force for shuttle bus services at Lackland Air Force Base, Texas. JRW also challenges the terms of the new solicitation, RFP No. F41636-95-R-0129, issued after cancellation of the initial RFP.

We deny the protest.

JRW is the incumbent contractor for providing the required shuttle bus services under a contract which it was awarded in 1990. The replacement RFP was issued as a total small business set-aside on August 5, 1994, and significantly increased the shuttle bus services required. The RFP called for submission of technical and price proposals for a base 9-month period with 2 option years and contemplated the award of a firm, fixed-price requirements-type contract to the lowest priced, technically acceptable offeror.

At the September 6 closing time, JRW was the sole offeror. On September 15, the contracting officer issued a discussion letter to JRW which asked the firm to address whether its proposed shuttle bus vehicles would be equipped with two-way radios, as required by the RFP. The contracting officer also advised JRW that the firm needed to complete and submit standard form (SF) 1411, "Contract Pricing Proposal Cover Sheet," along with an "informal cost breakdown which is supportive of [JRW's] proposed prices" so that the Air Force could determine whether JRW's offered price was fair and reasonable. JRW was directed to submit this information by September 20.

On September 21, JRW submitted a "Price Per Year" cost breakdown for the first option year of the contract, as well as a written statement advising the Air Force that the firm intended to equip each of its proposed shuttle buses with the required two-way radios. On September 22--in response to a request from the agency's price analyst--the contracting officer telephoned the president of JRW and requested a cost breakdown for the 9-month base period pricing. That same day, JRW responded with a price breakdown organized into the following categories or price elements: wages, fuel, repairs, equipment, miscellaneous, insurance, and profit.

On September 23, the Air Force price analyst advised the contracting officer that additional breakdowns for several of JRW's price elements were required; in this regard, the price analyst stated that the pricing information initially provided by JRW did not support how the firm arrived at the bottom line prices for the elements of wages, fuel, repairs, equipment, miscellaneous, and insurance. The price analyst also advised the contracting officer that the agency needed to know how many employees JRW intended to use for this contract. On September 26, the contracting officer telephoned JRW and relayed the price analyst's request; that same day, JRW transmitted a brief facsimile which identified the number and annual salary of each employee classification, as well as a brief statement asserting that the insurance portion of JRW's price was based on the insurance company's price quote. Later in the afternoon, JRW transmitted a second facsimile to the contracting

officer which advised the agency to issue any further requests for pricing information in writing.

By letter dated September 27, the contracting officer again requested price breakdowns for the elements of fuel, repairs, equipment, miscellaneous, and insurance. In response, the president of JRW telephoned the contracting officer and advised her that the firm "may have made a mistake" in its price proposal. By letter dated September 28, the contracting officer advised JRW that:

"the government will allow you the opportunity to submit a corrected [price] proposal. Provide corrected copies of your Schedule K prices and your SF 1411. The corrected SF 1411 must include a breakdown of cost for Wages, Fuels, Repairs, Equipment, Misc[ellaneous], and Insurance and the number of employees per job classification."

By letter dated September 30, JRW advised the Air Force that while:

"JRW feels that its gas and maintenance prices may not be adequate in some ranges [f]or [e]xp[er]iency purposes JRW Management will leave its [pricing] schedule unchanged."

JRW further advised the Air Force that because "[t]he quantities of work to be performed by the successful offeror as shown in the RFP are not clearly established but rather are only estimates JRW Management cannot determine what its actual cost would be for this work because the price can vary with differences in the quantities of work." Attached to the letter was a list which reiterated the prices for each element of JRW's pricing proposal and which stated that "[s]ince this bid is under a variance of ranges, this is the best estimate we can come up with."

From October 4 through October 20,¹ the agency proceeded to perform a price analysis of JRW's price proposal; in ascertaining whether JRW's offered prices were fair and reasonable, the agency conducted a detailed comparison between JRW's 1990 contract prices and those proposed for this effort. At the conclusion of this analysis, the Air Force determined that JRW had dramatically increased its price for providing the required shuttle bus services over those proposed in 1990; according to the Air Force's

¹During this time, JRW submitted an unsolicited letter dated October 17, which advised the Air Force that its initial price proposal was to be considered the firm's best and final offer (BAFO).

calculations, JRW's pricing per individual element had increased from 12 to 118 percent over the prices proposed in 1990. Additionally, the Air Force determined that JRW's current price proposal was approximately 39 percent higher than the government estimate for this requirement.

By letter dated November 14, the Air Force advised JRW that it was concerned about the firm's pricing for the categories of labor, repairs, equipment, and fuel. With respect to the labor element, the agency advised JRW that it failed to comprehend why JRW had significantly increased both the number of required employees as well as the wages for these individuals. The Air Force also requested "justification" for the firm's worker's compensation rate. With regard to the repairs and equipment elements, the Air Force questioned why JRW's price had increased 41 percent over that proposed in 1990 since JRW had proposed the same vehicles for the follow-on effort. Finally, the Air Force asked JRW to provide an annual consumption figure for the fuel element; in this regard, the record shows that unlike its 1990 proposal, JRW had priced this element using an unexplained "monetary amount per hour" figure.

By letter dated November 29, JRW responded that more mechanics and higher repair fees were proposed because unlike the 1990 contract--which required 13 vehicles--the current effort required 30 vehicles and JRW anticipated the need for more personnel and repairs. JRW also advised the Air Force that its worker's compensation rate was based on a rate of 21.34 percent required in the state of Texas. With respect to its proposed fuel price, JRW advised the Air Force that this figure was based on an expectation that at least two gallons of fuel would be used for each bus trip.

On December 7, the Air Force contracting officer telephoned JRW and advised the firm that while the agency agreed with the firm's pricing in the areas of repairs, miscellaneous and insurance, the agency was dissatisfied with JRW's prices for the elements of fuel, wages, and equipment. JRW was also advised that the Air Force was concerned about the number of drivers, mechanics and managers which the firm deemed necessary for this effort. At the conclusion of this conversation, all parties agreed that they would review these elements in light of that day's discussion, and that a negotiation meeting between the Air Force and JRW would be held on December 13.

On December 9, the contracting officer telephoned JRW and asked whether the company had revised any of the pricing elements discussed on December 7; JRW responded that its price proposal remained unchanged. The contracting officer then advised JRW that the Air Force was proposing a counter-offer figure for the 9-month base period which was

based on the government's price estimate for this effort plus an 8.5-percent profit figure. JRW responded that it would consider and discuss this counteroffer at the scheduled December 13 negotiation meeting.

Apparently due to illness, JRW's representative canceled the scheduled December 13 negotiation. On December 15, the Air Force telephoned the firm to discuss whether the firm would accept the agency's counteroffer; as a result of this discussion, on December 16, JRW sent the agency additional information regarding its proposed mechanic and manager labor mix. On December 20, the Air Force telephoned JRW and was advised that if the agency would change several of the solicitation's best estimated quantities (BEQ) set forth in the pricing schedule, JRW would agree to reduce the number of proposed managers; without this modification to the BEQs, JRW insisted that each of its proposed managers was necessary to avoid "nonperformance" risks. At the conclusion of this phone conference, the Air Force directed the technical activity to review and verify each of the solicitation BEQs.

By letter dated December 21, JRW asked the Air Force to advise it of the modifications which the agency intended to make to the discussed BEQs; by letter dated December 22, the Air Force advised JRW that in order to address JRW's risk concerns, and pursue successful negotiations with JRW, the agency was considering "a multi-year contract, revised BEQs, reduced ranges within estimated quantities of all line items, mandatory notification time prior to quantity increases above specified levels, use of government furnished equipment/vehicles to handle surge workload, and/or elimination of some services." The Air Force also advised JRW that while it "want[ed] to pay a fair and reasonable price that allows JRW Management to earn a fair profit without undue risk," the agency was not persuaded that JRW's proposed pricing--which reflected a per trip price increase of 118 percent and a 40- to 50-percent increase for extra night and visitor shuttle bus services above the 1990 contract--met this standard. In short, the Air Force advised JRW that "[t]he key issue unresolved for us is the percent increase for identical or similar service from the current contract to your proposed pricing."

On December 22, the technical activity issued a revision to the BEQ for contract line item number (CLIN 1004, "Unscheduled Bus Service"; this estimate was reduced from a BEQ of "2,300 - 2,499" trips to "1,500 - 1,699" trips. By letter dated January 4, 1995, the Air Force advised JRW of this modification.

On January 5 and 6, representatives from JRW met with Air Force officials at Lackland to negotiate the terms of a

contract for this requirement. Throughout the negotiations, the Air Force repeatedly emphasized that JRW's proposed prices were unreasonable and excessively high; finally, on January 6, the parties agreed to a contract price based upon the contractor's BEQ revisions and a 1-year base period. The Air Force asked JRW to submit certified cost and pricing data for the agreed upon terms; the agency also advised JRW that it would issue an amendment to the solicitation incorporating the negotiated changes, and setting forth the agreed-upon price.

On January 17, after issuing a draft amendment to the solicitation, the Air Force held a telephone conference with JRW. During this conference, JRW advised the agency that the amendment did not incorporate the terms JRW expected, and that the firm wanted to return to its originally proposed price. On January 24, JRW submitted a revised proposal--which it identified as its BAFO--which was substantially higher than the price agreed to at the January 6 negotiations.

On January 27, the contracting officer decided to resolicit the requirement for the following reasons. First, given the fact that no progress had been made in the last 4 months of negotiations with JRW, the contracting officer determined that further attempts at negotiation with JRW would not be productive. Next, the contracting officer determined that because the agency had changed several of the solicitation terms--for example, substantially reducing the required number of unscheduled bus service trips and changing the base period from a 9-month to a multi-year requirement--greater competition and cost savings would be obtained under a new competition. Finally, because March 3 was the last possible day for performance by JRW as the incumbent under the extension of services clause to the 1990 contract, the contracting officer determined that a recompetition was necessary to ensure that the agency obtained the required shuttle bus services.

On the afternoon of January 27, the contracting officer telephoned JRW and advised the firm that the agency was terminating negotiations with the firm and would resolicit the requirement. On January 30, JRW protested the agency's decision to terminate negotiations; on February 8 and 10, JRW protested the subsequent cancellation and the terms of the resolicitation for this requirement.

ANALYSIS

The Cancellation

In a negotiated procurement, the contracting agency has broad authority to decide whether to cancel a solicitation

and need only establish a reasonable basis for its cancellation. See Federal Acquisition Regulation (FAR) § 15.608(b); Budney Indus., B-252361, June 10, 1993, 93-1 CPD ¶ 450. Contracting officers are required to purchase at "fair and reasonable" prices, FAR § 15.802(b)(1), and cancellation of a solicitation is warranted when an agency cannot do so. See Selecta Corp., B-252182, May 26, 1993, 93-1 CPD ¶ 421; General Metals, Inc., B-248446.3, Oct. 20, 1992, 92-2 CPD ¶ 256. Cancellation is also warranted where the agency determines that cost savings may be realized by utilizing another procurement method or revised solicitation terms, so long as this determination does not arise from a lack of procurement planning or otherwise originate as a result of bad faith on the agency's part (for example, misleading a contractor into participating in a sham competition). See Budney Indus., *supra*; CFM Equip. Co., B-251344, Mar. 31, 1993, 93-1 CPD ¶ 280, *aff'd*, B-251344.2, Aug. 30, 1993, 93-2 CPD ¶ 134. Further, cancellation is justified where an agency determines that it is not in the government's best interest to proceed with a particular procurement. See FAR § 15.608(b)(4); Color Dynamics, Inc., B-236033.2, Oct. 27, 1989, 89-2 CPD ¶ 391, *aff'd*, B-236033.3, Dec. 22, 1989, 89-2 CPD ¶ 583 (agency properly determined it was in the best interests of the government to cancel and recompet a solicitation for the following year in the expectation of receiving lower prices and accomplishing the required work at lower cost to the government).

Here, the Air Force reports that its primary reason for canceling and resoliciting this requirement was JRW's unreasonably high price, and the agency's subsequent determination that lower trip quantities would satisfy its minimum needs. In response, JRW challenges the agency's conclusion that its price was unreasonably high by asserting that the Air Force's price estimate--which JRW's proposed price significantly exceeded--is unreasonable.

Because an agency's determination of price reasonableness involves the exercise of discretion on the part of the contracting officer, our Office will not question such a determination unless it is shown to be unreasonable. Bahan Dennis Inc., B-249496.3, Mar. 3, 1994, 94-1 CPD ¶ 184. To that end, the FAR provides that the contracting officer is responsible for selecting and using whatever price analysis techniques that will ensure a fair and reasonable price. See FAR § 15.805-2. One of those techniques is a comparison of the prices received with prices received under the prior contract; another technique is a comparison of the prices received with the government's independent price estimate. FAR §§ 15.805-2(b) and (e).

In this case, we think the Air Force's price analysis was unobjectionable. The sole basis for JRW's disagreement with the agency's estimate centers around the protester's contention that the Air Force's numbers do not take into account the "additional standby drivers," mechanics and vehicles which JRW believes are necessary to successfully perform the increased scope of services required here. Contrary to JRW's assertions, however, the record shows that in fact the Air Force accounted for the increased number of drivers by calculating a wage figure for that position which was based on an increased number of hours per trip figure. Further, the record shows that the Air Force's price estimate was based on the expectation that the increased number of buses and services could potentially require a second mechanic's services. Finally, the Air Force factored an "inflation adjustment" increase into the price calculations for the repair and equipment price elements.

In sum, we have carefully reviewed the agency's price estimate calculations and accompanying explanation and see no basis for JRW's assertion that the estimate is unreasonable. JRW's mere disagreement with the agency estimate does not by itself constitute a sufficient basis for questioning the government estimate. See ESCO, Inc., 68 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450; Bahan Dennis Inc., supra. Moreover, we think it is significant that despite being provided with at least five opportunities by the Air Force to explain the firm's pricing, JRW failed to articulate in any meaningful detail how its proposed prices constitute fair and reasonable rates for performing the required shuttle bus services. Under these circumstances, since the record otherwise supports the Air Force's price analysis, we find the agency's price concerns constituted a reasonable basis for canceling the RFP and resoliciting.

In addition to its concerns about the reasonableness of JRW's proposed price, we think the Air Force had another reasonable basis for canceling the RFP. As noted above, as a result of extensive negotiations with JRW, the agency discovered that lower trip estimates would meet its minimum needs--and otherwise decided that requiring a multi-year base period constituted a better procurement approach. Consequently, the Air Force relaxed several of the RFP's stated BEQs--thereby changing the nature of the agency's basic requirement. Such material changes in an agency's minimum needs certainly constitute a reasonable basis for canceling and resoliciting a particular requirement--especially where, as here, the modifications result in less

restrictive specifications,² creating the potential opportunity for increased competition and obtaining the required services at a lower price and cost savings to the government. See Budney Indus., supra; Xactex Corp., B-247139, May 5, 1992, 92-1 CPD ¶ 423.

The Resolicitation

JRW also challenges several aspects of the resolicitation, RFP No. F41636-95-R-0129, which was issued by the Air Force on February 6, 1995. Specifically, JRW contends that the resolicitation was not properly synopsisized in the Commerce Business Daily, see FAR § 5.101, and that the resolicitation otherwise fails to comply with the required time period milestones set forth in FAR § 5.203(b), which requires offerors to be provided with a 30-day "response time" to submit proposals. JRW also contends that the BEQ figures set forth in the pricing schedule do not correspond to the trip quantities set forth in the RFP's technical exhibits and that the solicitation's required pricing method for option years is ambiguous.

To the extent JRW challenges the solicitation's noncompliance with the FAR's synopsis and time period requirements, the Air Force responds that because of the 4-month delay incurred in attempting to negotiate a contract with JRW under the predecessor solicitation, and because JRW's performance under the incumbent contract expired in March, the agency's need for the required shuttle bus services has been classified as urgent, and, consequently, the resolicitation is being conducted on an urgent and compelling basis under FAR § 6.302-2. As such, the resolicitation is exempt from the FAR's general synopsis and time period requirements. See FAR § 5.202(a)(2); Electro-Methods, Inc., B-250931, Feb. 26, 1993, 93-1 CPD ¶ 181. In any event, JRW has failed to show how it was prejudiced by these alleged improprieties given that JRW was issued a copy of the resolicitation and submitted a timely offer. See Tek Contracting, Inc., B-245590, Jan. 17, 1992, 92-1 CPD ¶ 90.

The record shows that the number of trips set forth in the resolicitation's technical exhibits differs from the number of trips specified in the BEQs for each CLIN set forth on the RFP pricing schedule. JRW contends that this disparity in numbers renders the solicitation ambiguous since offerors will not know whether to use the technical exhibit estimates or the BEQs to prepare their pricing proposals. In response to JRW's protest, the Air Force explains that the BEQ

²According to JRW, a lower number of trip estimates results in less risk for the performing contractor and therefore constitutes less restrictive specifications.

numbers are controlling--and that the technical exhibits merely set forth historical estimates of trip quantities.³ According to the agency, since the exact range of required trips for each CLIN is unknown, and since offerors were to propose prices for a variety of BEQs for each trip item, the Air Force's purpose in including the historical trip data in the solicitation was to enable offerors to reasonably hypothesize as to which BEQ range was most likely to be the ultimate award amount.

The mere allegation that a solicitation is ambiguous does not make it so. Skyline Indus., Inc., B-257340, Sept. 22, 1994, 94-2 CPD ¶ 111. Rather, where, as here, a dispute exists as to the actual meaning of a solicitation requirement, our Office will resolve the matter by reading the solicitation as a whole, and in a manner that gives effect to all provisions of the solicitation. Plum Run, B-256869, July 21, 1994, 94-2 CPD ¶ 38. A solicitation ambiguity exists only where two or more reasonable interpretations of a specification are possible. Id.

Here, given the plain language of the RFP's pricing schedule which explicitly relates each CLIN price to a corresponding BEQ, we see no basis to conclude that the RFP is ambiguous. In short, we think it would be unreasonable for an offeror to conclude that its pricing is to be based on any number other than the BEQs specified in the pricing schedule itself.

JRW also contends that a comparison of section L-902, "Multiyear Unit Prices"--which requires unit prices to be the same for all program years--with section M-600, "Evaluation of Options," creates an ambiguity regarding how the Air Force intends to evaluate option year prices. In this regard, section M-600 of the resolicitation provides that:

"The Government will evaluate all offers for award purposes by adding the prices of all option years to the price of the basic contract period. In conjunction with this evaluation, all prices will be converted to a present value cost using a discount rate of 7% per annum."

³We note that although the Air Force solicited contractors' questions at a February 10 pre-proposal conference, JRW failed to raise these concerns at that time. Consequently, this protest was the Air Force's first notice that JRW perceived "ambiguities and contradictions" in the RFP's terms.

Consistent with the plain language of these provisions, the Air Force has explained that each pricing provision applies to a separate type of contract year. Section L-902 applies to pricing the multi-year requirement--identified in the RFP as four separate 6-month "program periods" which collectively constitute the required base period of contract performance and end in March 1998. In contrast, section M-600 applies to pricing the two 1-year option periods, which the RFP identifies as beginning in April 1998. Since section M-600 is the only clause which applies to the option years, clearly this is the only section pertaining to option year pricing and thus the 7-percent discount rate will only be used to evaluate option years. Since the solicitation pricing method is plain on its face, we see no basis to conclude that the RFP is ambiguous.

The protest is denied.

\s\ Michael R. Golden
for Robert P. Murphy
General Counsel