



Decision

Matter of: Business Computer Applications, Inc.

File: B-406230.3

Date: May 16, 2012

Jonathan D. Gaul, Esq., Smith, Gambrell & Russell LLP, for the protester.
Scott C. Briles, Esq., Department of Health and Human Services, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's decision to cancel a task order solicitation is denied where the level of effort required in the solicitation had to be cut by 43 percent because of significant funding reductions.

DECISION

Business Computer Applications, Inc. (BCA), of Atlanta, Georgia, protests the cancellation of request for task order proposals (RFTOP) No. 2011-IM-0005, issued by the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), to provide information management services on a level of effort basis to support the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). BCA also protests the placement of a order with Northrop Grumman under that firm's Federal Supply Schedule (FSS) contract to provide staffing support until an award is made under a revised solicitation for these services.

We deny the protest.

BACKGROUND

On September 22, 2010, the CDC awarded approximately 30 multiple award indefinite-delivery/indefinite-quantity contracts, in three domains: information management, information technology infrastructure, and management consulting. Each domain was further divided into three business categories: full and open, small business set-aside, and 8(a) set-aside. Agency Report (AR) at 2. BCA was

awarded a contract under the information management domain for the full and open and small business set-aside business categories.

The requirement for staffing support for NCCDPHP had been previously provided by Northrop Grumman under a different contract. However, the agency decided that this requirement should be acquired under a small business set-aside.

The RFTOP was issued on October 21, 2011, as a small business set-aside in the information management domain. The solicitation was sent to all four eligible small business contractors, including BCA. The period of performance for the task order was a base period of approximately 8 months, with four 1-year options.

All four contractors submitted proposals in response to the RFTOP. Award was made to 2020 Company, Ltd. After a debriefing, BCA timely protested the award on December 21. On January 5, 2012, the agency advised our Office that it was going to take corrective action in response to the protest. Specifically, the agency stated that it would conduct discussions with those offerors with technically acceptable proposals, request revised proposals as appropriate, and issue a new award decision. AR, Tab 11, HHS Notice of Corrective Action. Consequently, we dismissed BCA's protest on January 11.

In accordance with the corrective action, on January 24, a revised proposal was received from BCA. However, on January 27, the NCCDPHP was informed of its new budget authorizing appropriations through fiscal year 2012. According to CDC, the new budget for NCCDPHP necessitated the reduction of 43 percent of the level of effort for the RFTOP. Due to the significant reduction in the budget and labor requirements, the agency determined that it was in the best interests of the government to terminate the task order and cancel the RFTOP, which it did on February 8. The agency determined that it would issue a new task order solicitation based on the reduced requirements.

Meanwhile, an interim order was issued to the previous incumbent, Northrop Grumman under its FSS contract. A limited source justification (LSJ) was signed by the agency authorizing the interim order on a month to month basis. AR, Tab 13, LSJ Documents (Jan 6, 2012). A subsequent LSJ was signed authorizing a period of performance of 6 months for the interim order. AR, Tab 13, LSJ Documents (Feb 2, 2012). BCA then filed this protest.

DISCUSSION

BCA protests the cancellation of the RFTOP. According to the protester the agency has provided "no factual basis" for the cancellation and also has provided no evidence of budgetary constraints. Protester's Comments at 3.

In a negotiated procurement such as this one, the contracting agency has broad discretion in deciding whether to cancel a solicitation and need only have a reasonable basis for doing so. A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2. If a reasonable basis exists to cancel a solicitation, an agency may cancel the solicitation regardless of when the information first surfaces or should have been known, even if the solicitation is not cancelled until after proposals have been submitted and evaluated. See SEI Group, Inc., B-299108, Feb. 6, 2007, 2007 CPD ¶ 35 at 3. Cancellation of a solicitation is appropriate where an agency finds that its needs are no longer accurately reflected by an RFP, such as when there is a significant reduction in the anticipated workload. Superlative Techs., Inc., B-293709.2, June 18, 2004, 2004 CPD ¶ 116 at 5.

Here, the record establishes a reasonable basis for the cancellation of the solicitation. The budget of NCCDPHP was significantly reduced for FY 2012. Additionally, the various programs within NCCDPHP that would be the users/customers of the information management services to be procured under the present RFTOP, also suffered deep budget reductions. Therefore, the agency reasonably determined that a reduced level of effort was necessary to support the program requirements, and that, therefore, the RFTOP no longer reflected the CDC's needs.¹ In addition, the agency states that greater reporting requirements and additional performance measures, such as response time, vacancy reports and customer service, are necessary and will be included in the new solicitation. While BCA disagrees and suggests that the cancellation was a pretext not to make award to BCA, the record shows that the agency had a reasonable basis for cancelling the RFTOP because of the significant reduction in level of effort based on the budget reductions and the other changes in its requirements. See id.; PAI Corp., et al., B-244287.5 et al., Nov. 29, 1991, 91-2 CPD ¶ 508 at 3-4; Source AV, Inc., B-241155, Jan. 25, 1991, 91-1 CPD ¶ 75 at 3-4.²

BCA also argues that Northrop Grumman has subcontracted out a portion of the work under the interim contract to 2020, who in turn, has moved their personnel into position where 2020's personnel could gain unfair insight or access to information that was not available to BCA.³ Protester's Comments at 7. This allegation is

¹ Contrary to BCA's contentions, the agency has completely and reasonably documented this judgment.

² While BCA argues that the task order could simply have been adjusted to address the change in level of effort and requirements, we have recognized that it is improper to award a contract or task order with the intent to materially alter it after award. PAI Corp., et al., B-244287.5 et al., supra, at 4; Source AV, Inc., supra, at 4.

³ While BCA challenges the length of the order placed with Northrop Grumman, we find that the agency has reasonably justified the bridge contract while the new RFTOP is developed and a new competition conducted.

merely speculative and not for consideration by our Office, as it asks us to consider the possible benefit to a subcontractor for a future procurement. We also find this allegation to be premature because the agency has not yet issued or made award under a revised solicitation.

The protest is denied.

Lynn H. Gibson
General Counsel