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Decision

Matter of: MedVet Development LLC

File: B-406530

Date: June 18, 2012

Reginald A. Williamson, Esq., Kilpatrick Stockton LLP, for the protester.
Mary A. Mitchell, Esq., Department of Veterans Affairs, for the agency.
Gary R. Allen, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of cancellation of a solicitation after receipt of proposals and discussions is denied where the record shows that the agency reasonably concluded that the solicitation would not meet the agency's needs.

DECISION

MedVet Development LLC, of Lafayette, Louisiana, protests the decision of the Department of Veterans Affairs to cancel solicitation for offers (SFO) No. VA256-11-RP-0123 to lease space for a community-based outpatient clinic (CBOC) in Lafayette, Louisiana, and to resolicit this requirement.

We deny the protest.

The SFO was issued by the agency's Alexandria Veterans Affairs Medical Center (AVAMC) on February 3, 2011.¹ The VA received offers from three firms, including MedVet. Following evaluation of initial offers, the VA determined that only MedVet's proposal would be included in the competitive range. Contracting Officer's (CO)

¹ Authority to lease this requirement in Lafayette, Louisiana, was delegated to AVAMC by the agency's Real Property Service (RPS). Agency Report (AR), Tab 9, attach. 1, Memorandum of RPS Chief, Nov. 1, 2010.

Statement at 5. The VA conducted discussions with MedVet for more than 6 months.

In February 2012, as a result of its review of the SFO and another solicitation to lease space for a CBOC in Lake Charles, Louisiana, the RPS determined that the solicitations were defective because they were based upon an outdated form and deviated substantially from the General Services Administration's (GSA) regulations for leasing of real property. AR, Tab 9, Memorandum of Rescission of Delegations of Authority to Lease Space, Feb. 29, 2012, at 1. The VA also concluded that the SFO did not include VA's sustainability, seismic or physical security requirements and did not provide a conceptual design or any information in the schedules that would allow offerors to successfully propose the special-purpose, medically-related space sought. CO's Statement at 6. On March 7, the CO canceled the SFO.² SFO amend. 3.

MedVet protested to our Office on March 19.

DISCUSSION

MedVet raises numerous arguments objecting to the cancellation of the SFO. Specifically, MedVet complains that the missing requirements in the SFO do not provide a reasonable basis for the cancellation because MedVet provided for these requirements in its proposal. MedVet also contends that the deficiencies in the SFO cited by the agency do not exist or constitute, at best, minor deficiencies. Protest at 9-10. MedVet argues that even if deficiencies exist in the SFO, the agency should have amended the SFO and not cancelled it.³

In a negotiated procurement, a contracting agency has broad discretion in deciding whether to cancel a solicitation, and need only establish a reasonable basis for

² On that same day, the VA informed a member of Congress that the agency had canceled the solicitations because they omitted certain requirements related to energy efficiency, shell rents, and tenant improvements. See Protest, exhib. 5, VA letter to Congressional Member.

³ MedVet also complains that cancellation of the SFO occurred on the eve of award, after its offer was included in the competitive range and the firm had been negotiating with the VA. Protest at 2. We do not find that the cancellation of the SFO after negotiation with MedVet demonstrated that the cancellation was unreasonable. An agency may properly cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known, even if the solicitation is not canceled until after proposals have been submitted and evaluated and protesters have incurred costs in pursuing the award. Peterson-Nunez Joint Venture, B 258788, Feb. 13, 1995, 95-1 CPD ¶ 73 at 4.

doing so. Trujillo/AHW, JV, B-403958.4, Oct. 13, 2011, 2011 CPD ¶ 218 at 3. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. Logistics Solutions Group, Inc., B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 3. It is the responsibility of the contracting agency to determine its requirements, and our Office will defer to the activity's judgment. Id.; Peterson-Nunez Joint Venture, supra.

Here, the record supports the agency's assertion that the SFO was not consistent with current GSA leasing regulations. AR, Tab 9, Memorandum of Rescission of Delegations of Authority to Lease Space, at 1. For example, GSA acquisition regulations (GSAR) require that leases for property in excess of 10,000 square feet (as here) must be publicized on the FedBizOpps website, see GSAR § 570.106, which was not done here. Agency's Response to GAO Questions, May 30, 2012, at 4.

MedVet responds that the agency's concerns in this regard are post hoc, and, citing to our decision in Optelec U.S., Inc., B-400349, B-400349.2, Oct. 16, 2008, 2008 CPD ¶ 192, contends that a failure to publicize a procurement on the FedBizOpps website is not a valid justification for cancelling a solicitation. MedVet's Response, June 4, 2012, at 7-8. We find no merit to MedVet's arguments.

It is a fundamental obligation under the Competition in Contracting Act of 1984 that agencies obtain full and open competition, both to ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and reasonable prices. See 41 U.S.C. §§ 3301 et seq. (2011). The GSAR requirement for publication of certain SFOs on the FedBizOpps website implements this statutory requirement. We find that the VA's concern that it failed to comply with requirements for publishing notice of a solicitation and thus may not have obtained full and open and competition provide a reasonable basis for cancelling the SFO. Although the VA only fully explained the basis of this concern in response to our inquiries after the agency had filed its report in response to the protest, we do not agree with MedVet that this was not a valid concern.

We also find MedVet's citation to Optelec inapposite. There, contrary to MedVet's reading, the protest did not involve an agency's failure to publicize a procurement on the FedBizOpps website; in that case, the agency did so. Furthermore, that case did not concern an agency's cancellation of its solicitation.

The record also shows that the SFO did not adequately address a number of agency requirements. For example, the SFO was based upon a 2005 form (rather than the agency's more current 2009 form for SFOs), which does not set forth the agency's current sustainable design and energy efficiency for LEED-Silver

equivalency.⁴ Similarly, the SFO did not include the agency's most recent physical security criteria. See Agency's Response to GAO Questions, May 30, 2012, at 2. MedVet does not assert that the SFO provided for LEED-silver equivalency or for the agency's physical security requirements. See MedVet's Reply to VA's May 30 Response, June 4, 2012, at 3-4, 5. Rather, MedVet argues, as it has throughout its protest, that VA has no basis to cancel the SFO where the protester otherwise [deleted]. Id. The fact that MedVet may have [Deleted] misses the point. It is fundamental that offerors must be advised of the basis upon which their proposals will be evaluated. A solicitation that does not set forth a common basis for evaluating offers, which ensures that all offerors are on notice of the requirements for award and can compete on an equal basis, is materially defective. Rexon Tech. Corp.; Bulova Techs., Inc, B-243446.2, B-243446.3, Sept. 20, 1991, 91-2 CPD ¶ 262 at 5. Therefore, it is necessary for the sake of fair and equal treatment of all offerors that the solicitation contain the same requirements, so that their proposals are evaluated using the same criteria.

We conclude that the cancellation was reasonable, and that re-solicitation is justified.⁵

Accordingly, we deny the protest.

Lynn H. Gibson
General Counsel

⁴ According to website of the U.S. Green Building Council, the LEED green building rating system is a set of certification standards established by specialized criteria for particular types of projects. Current LEED certification rating levels range from certified through silver, gold, and platinum, based on a point-scoring system.

⁵ MedVet makes other arguments that we do not address because we find that the agency had a reasonable basis for cancellation, as discussed above. For example, MedVet claims that there is potential for Procurement Integrity Act violations if information from its prior proposal is released to other offerors. Protest at 11-12. MedVet's speculation of possible violations provides no valid basis for protest.