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Decision

Matter of: Advancing Technology Systems II

File: B-415464.4; B-415464.5

Date: December 10, 2018

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DIGEST

Protest alleging that agency's cancellation of solicitation was pretextual is denied where the agency provided a reasonable basis for its cancellation decision.

DECISION

Advancing Technology Systems II (ATS), a small business located in Warren, Michigan, challenges the cancellation of request for proposals (RFP) No. W56HZV-16-R-L102, issued by the Department of the Army for information technology (IT) support services for the Detroit Arsenal.¹ The protester contends that the cancellation was a pretext to avoid a competitive procurement and to avoid the resolution of protest issues.

We deny the protest.

BACKGROUND

On March 6, 2017, the Army issued the RFP, contemplating the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract for IT support services for the Detroit Arsenal in Warren, Michigan. On September 26, the agency awarded a contract for the

¹ ATS is a mentor-protégé 8(a) joint venture consisting of Unified Business Technologies, Inc. (UBT), the incumbent contractor for the IT support services requirement, and a second company, Addon Services, LLC.

requirement to Bowhead Total Enterprise Solutions, with a total evaluated price of \$49.1 million.

Our Office received two protests of the award, including a protest filed by ATS. In response, on November 1, the agency elected to take corrective action rather than litigate the protest. The agency represented that it intended to terminate the contract to Bowhead and issue an amendment to the solicitation “to address or clarify, to the extent appropriate, some of the concerns raised in these protests, and to extend the deadline for receipt of proposals in response to the amendment to allow [o]fferors to submit revised proposals.” Agency Report (AR), Tab 1a, Corrective Action Notice, at 1. As a result, the protests were rendered academic and were dismissed.

By letter dated May 7, 2018, the Army notified ATS that the RFP was being cancelled and would not be resolicited. AR, Tab 1b, Cancellation Notice, at 1. The letter explained that approximately 30 percent of the requirement, consisting of IT support services performed for the Network Enterprise Center (NEC), was to be transitioned from the Army Contracting Command-Warren to the Army Contracting Command-Aberdeen Proving Ground. The letter notified ATS that the remaining work would be procured using the General Service Administration’s (GSA) 8(a) Streamlined Technology Acquisition Resources for Services (STARS) II governmentwide acquisition contract (GWAC). ATS is not an 8(a) STARS contract holder; and ATS did not, at this juncture, challenge the cancellation decision.

Later in May, GSA provided the Army with a market research report, compiled at the Army’s request, showing the results of a request for information (RFI) sent to all GSA STARS II contract holders. The agency used these results to request proposals from certain STARS II contract holders for portions of the requirement.² In August, the agency issued four task orders to these contract holders as direct awards for various portions of the original requirement. The STARS II contract allows directed awards to be issued to contract holders, provided the awards are under the applicable competitive threshold, currently \$4 million, per Federal Acquisition Regulation § 19.805-1(a). AR, Tab 30, GSA Small Business GWAC Ordering Guide, at 25.

² The first of these task orders, task order No. W56HZV-18-F-L838, was issued to LinTech Global, Inc. on August 22, in the amount of \$3,465,170, for corporate information office (CIO) IT services. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 13. On August 23, the agency issued task order No. W56HZV-18-F-L841 to FedITC, LLC in the amount of \$523,584 for integrated logistics support center cybersecurity support. Id. at 14. On August 24, the Army issued task order No. W56HZV-18-F-L888 to UBT in the amount of \$1,756,736, for program executive office combat support and combat service support IT services. Id. at 13. As set forth above, UBT is the incumbent contractor, and one of two joint venture participants that together comprise ATS. On August 31, the agency issued task order No. W56HZV-18-F-L858 to UBT in the amount of \$3,501,020, for program executive office ground combat systems mission IT services. Id.

On September 4, UBT was copied on a “whistleblower” letter purportedly sent to the Army Inspector General’s office by an anonymous employee of the Army’s Tank-automotive and Armaments Command (TACOM). AR, Tab 23, Whistleblower Letter at 1. The letter alleged that a UBT employee (who was specifically named) had worked with “one or more government employees” (three TACOM employees were specifically named) to plan a partnership venture, and steer the award of the contract for TACOM CIO IT services to LinTech Global, which would then subcontract services to their venture. Id. The letter also alleged that these government employees caused the agency to cut off negotiations with the incumbent contractor, in order to further this plan. Id.

On September 10, ATS filed this protest with our Office challenging the decision to cancel the IDIQ contract in May. ATS argued that it first learned of its basis for protest upon receipt of both the whistleblower letter and notice of the task order awards to LinTech and FedITC.

The contracting officer subsequently investigated the allegations raised in the letter, and concluded that the decision to award the LinTech and FedITC task orders “was proper, based on customer mission needs and sound contracting principles.” AR, Tab 22, Contracting Officer Investigation Memo., at 9. The contracting officer additionally found no evidence to support the allegation that the named TACOM employees had improperly influenced the award to LinTech, and no evidence of a financial connection between the individuals named in the letter. Id.

DISCUSSION

ATS asserts that, upon being notified of the task orders issued to Lintech and FedITC, it first learned that the agency’s stated rationale for cancelling the IDIQ solicitation was a pretext, and that the Army’s real reason for cancelling the solicitation was to avoid competition and avoid the need to decide the protest issues raised by ATS (and another protester) after the initial award to Bowhead in September of 2017. The protester posits that, in furtherance of this attempt to evade competition, the agency split the requirement into four direct-award task orders under the 8(a) STARS II contract vehicle.³ In addition to this challenge, the protester contends that the agency failed to

³ The protester contends that it is not challenging the issuance of the 8(a) STARS II task orders in question, but rather is challenging the agency’s May 2018 cancellation of the original IDIQ solicitation. Despite the fact that this protest was not filed until September 10, the protester argues that the protest is timely because ATS did not have notice of the agency’s “bad faith scheme” to cancel the RFP in order to issue direct-award task orders for the requirement until September 4, which is the date that ATS received notice of the awards to LinTech and Fed ITC and the date it received the whistleblower letter. Response to Dismissal Request at 2. Because the agency has not adequately rebutted this showing, and the record is otherwise unclear, we cannot find

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reasonably investigate the allegations raised in the anonymous whistleblower letter, which ATS characterizes as alleging a self-dealing scheme, on the part of agency personnel, to cancel the IDIQ solicitation in order to select task order recipients for the requirement that would subcontract such work to a venture owned by these same agency personnel.⁴

In a negotiated procurement, an agency has broad authority to decide whether to cancel a solicitation. VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6. Thus, we have consistently explained that an agency need only establish a reasonable basis to support a decision to cancel a solicitation. AeroSage LLC, B-410648.2, B-410648.3, Mar. 20, 2015, 2015 CPD ¶ 111 at 3. A reasonable basis to cancel exists where, for example, an agency concludes that a solicitation does not accurately reflect its needs, WKF Friedman Enters., B-409892.2, Sept. 25, 2014, 2014 CPD ¶ 282 at 2, or where the agency discovers an existing contract for its requirement would be more advantageous to the government than continuing with the procurement. Brian X. Scott, B-310970, B-310970.2, Mar. 26, 2008, 2008 CPD ¶ 59 at 3.

Where, as here, a protester has alleged that the agency's rationale for cancellation is but a pretext--that the agency's actual motivation is to avoid awarding a contract on a competitive basis or to avoid resolving a protest--we will closely examine the reasonableness of the agency's actions in canceling the acquisition. Inalab Consulting, Inc.; Solutions by Design II, LLC, B-413044 et al., Aug. 4, 2016, 2016 CPD ¶ 195 at 7. Even if it can be shown that pretext may have supplied at least part of the motivation to cancel the procurement, the reasonableness standard applicable to cancellation of a solicitation remains unchanged. Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 4.

Here, we find that the agency has provided a reasonable basis for its decision to cancel the solicitation, specifically a substantial change in its requirements. In this regard, the original requirement, as solicited in March 2017, included certain "above baseline services" performed for the NEC, which represented approximately 30 percent of the total requirement. Supp. COS/MOL at 18. These NEC services, however, are slated to be transitioned to a different Army contracting center. See AR, Tab 2, Cancellation Memo., at 2. While the Army originally believed it had sufficient time prior to the scheduled transition deadline to include the NEC requirement within the existing procurement, the agency encountered acquisition delays. In light of these delays, and

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on this record that ATS's protest is untimely. See Sigmatech, Inc., B-296401, Aug. 10, 2005, 2005 CPD ¶ 156 at 5 (our Office resolves doubts over issues of timeliness in favor of protesters).

⁴ While we do not address in detail every argument raised by ATS in its protest, we have reviewed each issue and do not find any basis to sustain the protest.

to avoid the potential disruption stemming from the transition, the agency decided to separate the NEC services from the acquisition of the other requirements. See id. at 3.

As a result of this change, the solicitation as originally drafted no longer reflected the agency's requirements. Accordingly, it did not make sense to proceed with a competition based on that solicitation, e.g., by reevaluating already-submitted proposals. While the protester asserts that the agency could still have amended the solicitation and then requested revised proposals, we see no reason to question the agency's decision to cancel the solicitation instead. We note that, regardless of which direction the agency took, the agency would still have had to solicit proposals for a materially different set of requirements, representing a substantial departure from the existing competition already underway. We therefore conclude that the agency's decision to cancel the solicitation was reasonable in light of its changed requirements.

In addition to the change in requirements, another factor in the agency's cancellation decision was its recognition of the efficiency gains to be realized in dividing the requirement into separate, direct-award task orders under an existing IDIQ contract. In this regard, the agency noted, in a March strategy document, that its original procurement strategy was motivated by expected efficiency gains stemming from the inclusion of the NEC work, which created an opportunity for the agency to utilize one contractor "to leverage resources across all customers/efforts (and reduc[e] effort on the Government side for providing network access to multiple contractors)." AR, Tab 7a, IT Services Strategy/Support Bullets, at 1. The removal of these services, however, resulted in the elimination of these efficiencies. See COS/MOL at 12. At the same time, the agency estimated that utilizing the existing 8(a) STARS II contract would enable the Army to save approximately four full-time staffing equivalents for the duration of the procurement. See AR, Tab 2, Cancellation Memo., at 3-4. Thus, the advantages of using the existing contract vehicle provide further support for the reasonableness of the agency's decision to cancel the RFP.

The protester additionally asserts that the allegations made in the whistleblower letter raise serious concerns about the agency's rationale for cancelling the IDIQ solicitation, and that, despite this, the agency did not conduct an adequate investigation into the veracity of these allegations. Based on our review of the record, however, we find that the allegations do not relate to the cancellation of the RFP.⁵ In this regard, we note that

⁵ To the extent that the whistleblower allegations relate to the subsequent issuance of task orders under the 8(a) STARS II contract, we note that the protester has stated it "**does not protest** the issuance of the [a]gency's 8(a) STARS II GWAC task order awards." Comments at 16 (emphasis in original). Nor would such a protest ground fall within our bid protest jurisdiction since ATS, which does not hold an 8(a) STARS II contract, would not be an interested party to challenge the issuance of task orders for a contract it does not hold. Additionally, we note that the value of the task order issued to LinTech is below \$10 million, and therefore any protest ground challenging that task order would not fall within our Office's statutory grant of jurisdiction to hear protests in
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the whistleblower letter does not mention the cancellation of the original solicitation or raise any assertions directly relating to that cancellation. The agency's investigation into these allegations similarly did not reveal any additional facts supporting the protester's contention that the allegations somehow relate to the IDIQ cancellation. Furthermore, the protester has not presented any specific facts supporting this assertion. For example, the protester does not discuss what role, if any, the individuals named in the whistleblower letter had with respect to the cancellation decision.⁶ While the protester does note that the UBT employee named in the letter incorporated his own company 16 days after the agency's announcement of the cancellation, this fact does not provide any support for ATS's contention that the UBT employee had involvement in, or even advance notice of, the cancellation decision.

Accordingly, we conclude that the allegations raised in the whistleblower letter do not relate to the agency's cancellation decision, and therefore do not provide us with any basis to question the reasonableness of that decision. And, as noted above, the Army has provided a reasonable basis for the cancellation decision, specifically the significant change in the agency's requirements.

The protest is denied.

Thomas H. Armstrong
General Counsel

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connection with task and delivery orders issued under civilian agency multiple-award IDIQ contracts. See 41 U.S.C. § 4106(f).

⁶ Our own review of the record indicates that while one of the named individuals took part in the agency's process for selecting task order awardees (which took place during the May through August 2018 timeframe), none of the individuals named in the whistleblower letter appears to have had a significant role in the agency's cancellation decision (which took place from February through April 2018). See, e.g., AR, Tab 22, Contracting Officer Investigation Memo., at 6 (documenting interview with one of the named individuals, and noting the individual's representation that he "became involved once the RFI results were given to [him] by contracting," i.e., after the cancellation decision); see also AR, Tab 4, Chief of Operations Decl.; AR, Tab 2, Cancellation Memo., at 2.