



Decision

Matter of: RN Expertise, Inc.

File: B-401020

Date: March 27, 2009

Rosemary H. Hayes, Esq., Hayes & Caraballo, PL, for the protester.
Robert J. McMullen, Esq., Naval Supply Systems Command, for the agency.
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Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's decision to cancel solicitation and obtain its requirements through an interagency agreement is not objectionable where it is based on reasonable conclusion that utilizing the interagency agreement would result in substantial cost savings as compared with an award under the canceled solicitation.

DECISION

RN Expertise, Inc. of Altamonte Springs, Florida protests a decision by the Department of the Navy, Naval Supply Systems Command to cancel request for proposals (RFP) No. N00189-08-R-Z071, for worldwide urine collection services for drug testing.

We deny the protest.

On October 6, 2008, the Navy issued the RFP anticipating the award of a 1-year contract, plus four 1-year options for the collection of urine specimens from Navy civilians in order to conduct testing for illegal drugs. The RFP required offerors to submit proposals with fixed prices (based upon estimated quantities) for collections associated with four categories of contract line items: (1) collections for positions located in the continental United States (CONUS); (2) collections for positions outside CONUS (OCONUS); (3) collections for pre-employment purposes; and (4) collections for reasonable suspicion of drug use. According to the RFP, the Navy estimated that a total of 47,000 collections would be required during the first 12 months of performance as follows: CONUS (40,580); OCONUS (400); pre-employment (6,000); and reasonable suspicion of drug use (20). Award was to be made to the offeror submitting the proposal determined to represent to the best

value to the government considering four technical evaluation factors (corporate experience, past performance, management approach, and socio-economic plan) and price, with the technical factors considered to be more important than price. RFP at 57.

The Navy received four proposals by the RFP's November 12 closing date (including a proposal from RN Expertise). Based on the agency's evaluation of the offerors' proposals, the proposal submitted by RN Expertise was identified as representing the best value to the government with a total price of \$15,237,862.

The Navy explains that, after selecting RN Expertise's proposal but before making award, it requested funding from the Department of the Navy, Drug Program Management, Office of Civilian Human Resources, which, in turn, sought funding from the Department of Defense (DOD). Agency Report (AR) at 3. As reflected in the record, DOD informed the Navy that the contemplated award to RN Expertise was too expensive and advised the Navy to take advantage of lower pricing under an interagency agreement between DOD and the Department of the Interior (DOI), which provides for obtaining urine collection services for drug testing purposes through a contract held by DOI. AR, Tab 9, Dec. 15, 2008 e-mail from Navy Drug Program Coordinator; AR, Tab 2, Interagency Agreement at 1. After reviewing the terms of the interagency agreement, the Navy determined that, even without taking into account programmatic efficiencies, utilizing the interagency agreement would result in a savings of \$592,910.40 in the base year alone, as compared with award to RN Expertise. Based on this cost savings, the Navy decided to cancel the solicitation.

Upon learning that the solicitation had been canceled, RN Expertise filed an agency-level protest challenging the agency's cancellation decision. The Navy denied the protest and RN Expertise then filed its protest of the cancellation with our Office.

With regard to competitive negotiated acquisitions, Federal Acquisition Regulation (FAR) § 15.305(b) provides that "[t]he source selection authority may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Government." We have consistently held that an agency has broad authority to decide whether to cancel a solicitation issued under competitive negotiated procedures, and to do so need only establish a reasonable basis. We have recognized that the potential for cost savings provides a reasonable basis for cancellation. Business Commc'ns Sys., Inc., B-218619, July 29, 1985, 85-2 CPD ¶ 103 at 3. 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 canceled until after proposals have been submitted and evaluated, or even if discovered during the course of a protest. SEI Group, Inc., B-299108, Feb. 6, 2007, 2007 CPD ¶ 35 at 3; VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6.

RN Expertise argues that: (1) acquiring the services under the interagency agreement is actually more expensive than under a contract awarded to RN Expertise under the canceled RFP; (2) the services called for under the RFP are outside the scope of the contract to be used to obtain the services pursuant to the interagency agreement, thereby rendering the contemplated orders non-competitive and contrary to law; (3) the agency failed to consider “best value” as provided in the canceled solicitation when it decided to utilize the interagency agreement; and (4) use of the interagency agreement is improper because the Navy has not complied with necessary policies and procedures to have its collection requirements met under the interagency agreement, including the requirements established under the Economy Act, 31 U.S.C. § 1535 (2006) and FAR subpart 17.5. We find the protester’s challenges to be without merit.

As an initial matter, there is nothing in the record to suggest that utilizing the interagency agreement will be more expensive than award to RN Expertise under the canceled solicitation. The agreement expressly provides for charging DOD agencies two fixed rates, a rate for CONUS collections and a separate rate for OCONUS collections.¹ These rates, when multiplied by the estimated number of tests identified in the solicitation, support the cost savings identified by the agency. The protester’s challenge to the cost savings is based not on these fixed rates, but on a calculated composite collection rate which the protester derives from prices of actual orders issued pursuant to the agreement. This composite rate, however, is based in part on orders for other than collection services. As a consequence, the protester’s arguments in this regard do not cast reasonable doubt on the agency’s findings.

Regarding the additional challenges raised by the protester, they are unsupported or irrelevant. Specifically, the protester fails to provide any explanation of its allegation that the Navy’s requirements are outside the scope of the DOI contract to be used in connection with the interagency agreement.² To the contrary, while the statements of work for the solicitation and the DOI contract may not be identical, they are in fact similar in material respects. Absent any concerns regarding material differences between the scope of the solicitation and the DOI contract, we see no basis to conclude that the agency acted unreasonably in finding that “[t]he required services

¹ Unlike the canceled solicitation, the agreement does not make any distinction with respect to pricing for collections associated with “pre-employment testing” or “reasonable suspicion testing.”

² In its comments the protester asserts that using the interagency agreement impermissibly increases the dollar value of the DOI contract by \$2,125,065. Protester’s Comments at 6. This assertion is unexplained and appears to be misplaced since the DOI contract is a requirements-type contract and the contract does not appear to state a maximum dollar value or include a specific ordering limit.

under both vehicles are the same or equal.” AR, Tab 16, Declaration of Navy Drug Program Coordinator.

In addition, the protester’s “best value” concern and its challenge to the legality of the interagency agreement are misplaced. Regarding the “best value” issue, the protester suggests that it was improper for the agency to consider solely cost savings in deciding to cancel the solicitation since the solicitation established the agency’s intent to obtain the “best value” through a price/technical tradeoff process, with technical factors being more important than price. This argument is misplaced because, as noted above, an agency need only have a reasonable basis to cancel a solicitation, and the reasonable possibility of achieving cost savings provides such a basis. Because the “best value” issue relates to the intended award under the canceled solicitation and the protester has failed to explain how the award provisions of the canceled solicitation are relevant to our consideration of the reasonableness of the agency’s cost savings findings and cancellation decision, we have no basis to question the agency’s decision to cancel the RFP.

Finally, the protester’s concerns regarding the Navy’s failure to comply with certain administrative procedures, including those established by the Economy Act and the FAR, are misplaced since the procedures and policies identified concern internal administrative matters for the agency,³ or they concern the Navy’s compliance with requirements associated with ordering under the agreement.⁴ As a consequence,

³ By way of example, in support of its assertion that the Navy’s utilization of the interagency agreement is improper, the protester cites, without elaboration, internal agency guidance regarding required approvals for “centrally managed contracts or agreements” as specified in the Navy’s Human Resources Manual regarding its Drug-Free Workplace Program. Protester’s Comments at 6. Such internal guidance is not mandatory and does not support a basis of protest. Modern Techs. Corp. et al., B-278695 et al., Mar. 4, 1998, 98-1 CPD ¶ 81 at 15.

⁴ In this regard, the protester notes that the Navy did not prepare determinations and findings establishing that: (1) use of the interagency acquisition is in the best interest of the government; and (2) the services or supplies cannot be obtained as conveniently or economically by contracting directly with a private source, as required by law and regulation. See 31 U.S.C. § 1535; FAR § 17.503. Any such failure is not material, however, since the findings only need to be made before placing orders under the agreement. Id. They are not a prerequisite to cancellation of the solicitation.

they do not involve the propriety of the cancellation decision and do not provide a basis to challenge the reasonableness of the Navy's actions.

The protest is denied.

Gary L. Kepplinger
General Counsel