



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Brian X. Scott

File: B-401960

Date: November 9, 2009

Brian X. Scott, the protester.

Janis R. Millete, Esq., Corps of Engineers, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency decision to cancel request for quotations was reasonable where, due to the passage of time and other factors, the agency requirement no longer exists.

DECISION

Brian X. Scott of Colorado Springs, Colorado, protests the cancellation of request for quotations (RFQ) No. W912HQ-09-AFGHAN-01, issued by the Department of the Army, U.S. Army Corps of Engineers (USACE), for support in connection with the Afghanistan Sustainable Infrastructure Plan (ASIP).

We deny the protest.

The agency originally issued a sources sought notice for this USACE Research and Development Office (RDO) requirement on February 6, 2009, and received three responses. After reviewing these responses, the agency determined that none of the three responding firms had the capability to perform the requirements of the RFQ. Therefore, on March 25, the agency issued a notice of intent to issue an order for the requirement on a sole-source basis. Following the issuance of this notice, but before the order was placed, the agency received new expressions of interest from additional sources, including Brian X. Scott.

In light of the additional expressions of interest, the agency cancelled the notice of intent to make a sole-source award on April 2, and revised the specifications for the requirement in order to further explain the nature of the work. The agency then issued RFQ No. W912HQ-09-AFGHAN on April 4, with a closing date of May 18. However, no quotations were received in response to this RFQ. Since no quotations

were received despite the expressions of interest, the contracting officer concluded that the specifications were defective and cancelled the RFQ on that basis on June 5. The same day, the contracting officer made further revisions to the specifications and statement of work, and reissued the RFQ as No. W912HQ-09-AFGHAN-01, with a closing date of June 18. The closing date of this RFQ was later extended by amendment to July 6. Six quotations, including Brian X. Scott's, were received by the amended due date.

During the evaluation of the quotations, on July 22, RDO informed the agency that it wanted to cancel the RFQ and did not intend to resolicit for the requirement. Agency Report (AR), Tab 19, RDO Email, July 22, 2009. The agency contracting staff then requested that RDO provide a justification for the cancellation. Id., Tab 19, USACE Email, July 22, 2009. RDO responded to the agency's request on August 5, stating that it wanted to cancel the RFQ because the quotations were not responsive to the statement of work and because the quoted prices were substantially higher than the independent government cost estimate. Id., Tab 24, RDO Email, Aug. 5, 2009. The contracting staff apparently was somewhat confused by this rationale, given RDO's prior statement that it did not intend to resolicit, and asked RDO whether the requirement still existed. Id., Tab 26, USACE Email, Aug. 13, 2009. RDO then advised the contracting staff that "the requirement, as written in the statement of work, no longer exists due to the lengthy passage of time during which the ASIP project itself has continued to develop." Id., Tab 27, RDO Email, Aug. 25, 2009. RDO provided the contracting staff with additional background on the status of the ASIP project on September 4, id., Tab 28, RDO Email, Sept. 4, 2009, and the agency cancelled the RFQ on September 9. The cancellation notice did not set out the agency's rationale.

On September 11, Brian X. Scott contacted the agency to request that it provide the "reasonable basis" for the cancellation of the RFQ. Id., Tab 30, Protester Email, Sept. 11, 2009. The agency responded as follows:

Some of the work needed to be completed before the Contracting Officer was able to negotiate and award the subject contract so a joint interagency multi-national team performed that part of the work. Other portions of [the] work are no longer needed due to the passage of time and changed circumstances in Afghanistan.

Id., Tab 30, USACE Email, Sept. 15, 2009. Mr. Scott then inquired as to whether the work had been performed by government personnel, or if contractor personnel were involved. The agency contracting staff relayed this question to RDO, which responded that the work had been performed by government personnel.

Mr. Scott alleges that the stated reasons for the cancellation of the RFP were a pretext for subverting the competitive process in this procurement. In his protest, Mr. Scott speculated that the work was completed through a sole-source award to another contractor. Protest at 3. After receiving the agency report on the protest,

and despite the agency's response that government personnel completed the work, Mr. Scott asserts that the requirement was likely performed by a contractor because, for example, 90% of State Department staff in Afghanistan is contractor staff, according to Mr. Scott. Comments at 2. Mr. Scott also asserts that alleged inadequacies in the statement of work, mistakes in the evaluation of quotations, and the agency's failure to develop a reasonable government cost estimate were delaying tactics and subterfuge designed to avoid making award on a competitive basis.

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ. Surgi-Textile, B-289370, Feb. 7, 2002, 2002 CPD ¶ 38 at 2. In this regard, we have found the cancellation of an solicitation to be reasonable where the agency determines that it no longer has a requirement for the item solicited, SKJ Assocs., Inc., B-294219, Aug. 13, 2004, 2004 CPD ¶ 154 at 3, 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. Here, the record shows that the agency had a reasonable basis to cancel the RFQ.

As explained by the Deputy Director of USACE RDO, the ASIP was initiated in April 2008, at which time a government team was assembled to develop ASIP capabilities, methodologies, and tools. AR, Tab 35, RDO Deputy Director Memorandum for the Record, at 1. The ASIP project thus was underway prior to issuance of the RFQ in question here, and the ASIP team continued to work through, and following, this cancelled USACE procurement. Id.

According to the Deputy Director, the procurement here was intended to provide low-level assistance to augment the government team in their refinement of the ASIP's capabilities. Id. However, since this procurement effort began, there has been an increase in interest in Afghanistan reconstruction and stability operations, and a commensurate increase in the level of activity in this area, including the development of strategies, models, and plans by groups independent of ASIP activities. Id. Many of the products and analyses developed by these groups are similar to those solicited in the RFQ, and since this procurement effort began, several developments have affected USACE's requirements, as well as the need for the tasks outlined in the RFQ. Id.

For example, in January 2009, a NATO Research and Technology Group was created to focus on "Assessing Outcomes for Multinational Missions," including missions for reconstruction, regional stabilization, and capacity development. Id. at 2. On May 5, this group began a program of work that included "Measuring Progress in Conflict Environments." Id. Also, in June 2009 a related activity initiated by Joint Forces Command began to develop new concepts for multinational and interagency operations. Id. The activities of these groups have now duplicated one of the tasks described in the cancelled solicitation. Id.

In another example, in spring 2009, an interagency group led by the Department of State formulated and began work on a descriptive model, introduced on March 26, entitled the “Sub-National Assessment Model.” Id. This effort has now overtaken two other tasks described in the RFQ. Finally, in June 2009, USACE began preparations to deploy a USACE employee and subject matter expert to Kabul. Id. This individual arrived in Afghanistan on July 4 and, as a subject matter expert, has been providing information, advice, and contacts on all aspects of Afghanistan relevant to the ASIP. Id. The deployment of this employee has now eliminated the need for an additional task described in the RFQ. Given the non-ASIP efforts described above, and other governmental and multinational efforts undertaken since this procurement effort began in February, all tasks described in the RFQ have now been completed, or are in process with government personnel in-country. Id. at 3-4.

With respect to Mr. Scott’s argument that the agency’s conduct during the procurement, and its justification for cancellation of the RFQ, were a pretext for avoiding the competitive process, the record shows that the major portion of the activities undertaken by non-ASIP entities, later identified as duplicative of the tasks required under the RFQ here, occurred prior to receipt of quotations on July 6. Therefore, there is no basis to conclude that any delay or difficulty in the agency’s evaluation of quotations was a pretext for subverting the competitive process, as Mr. Scott argues. While it is unfortunate that USACE was not more aware of multinational efforts taking place in Afghanistan during the development of the procurement effort here, an agency may properly cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known. Quality Tech., Inc., B-292883.2, Jan. 21, 2004, 2004 CPD ¶ 29 at 2.

In sum, we conclude that the agency’s cancellation of the RFQ was reasonable given that, due to the passage of time and the activities of non-ASIP entities in Afghanistan, the requirement described in the RFQ no longer exists.

The protest is denied.

Lynn H. Gibson
Acting General Counsel