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Decision

Matter of: Lockheed Martin Corporation

File: B-408686.5

Date: December 22, 2014

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Jonathan D. Shaffer, Esq., Mary Pat Buckenmeyer, Esq., John S. Pachter, Esq., Zachary D. Prince, Esq., and Elspeth A. England, Esq., Smith Pachter McWhorter PLC, for IBM Corporation, the intervenor.

Corey J. Lastinger, Esq., and Christian M. Butler, Esq., Department of Homeland Security, for the agency.

Kenneth Kilgour, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging cancellation of a solicitation is denied where the agency reasonably concluded that the solicitation did not accurately reflect its needs.

2. Protest of agency's sole-source extension of incumbent contractor's order, for continued operations and maintenance support services for a 6-month period while agency resolicits on the basis of requirements accurately reflecting its needs, is denied where the agency reasonably concluded that only the incumbent contractor could meet the agency's immediate need for these services without a break in service.

DECISION

Lockheed Martin Corporation, of Bethesda, Maryland, protests the cancellation of request for quotations (RFQ) No. HSBP1012Q71262, issued by the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), for operations and maintenance (O&M) support services for two computer software applications. Lockheed Martin also protests the issuance of a sole-source extension of the incumbent contractor's (IBM Corporation) task order. The protester asserts that both decisions lack a reasonable basis.

We deny the protest.

BACKGROUND

The Cargo Systems Program Directive (CSPD) of the CBP monitors cargo entering the United States using two computer systems--the Automated Commercial System (ACS) and the Automated Commercial Environment (ACE). ACS, originally introduced in 1984, is used by CBP and maintained by CSPD to track, control, and process all commercial goods imported into the United States. RFQ § C.3.2.2. The ACE system, designed to replace ACS and other legacy systems, provides CBP personnel with enhanced automated tools and information to distinguish between cargo to target and investigate because it poses a potential risk, and cargo to be expedited because it complies with U.S. laws, before the cargo reaches the U.S. border. RFQ § C.3.2.1. The RFQ sought to obtain software applications O&M services for both the ACS and the ACE systems. Lockheed Martin is a subcontractor to IBM, the incumbent contractor.

The RFQ, issued on August 15, 2012 to General Services Administration (GSA), Federal Supply Schedule (FSS), Information Technology Schedule 70 contract holders, contemplated the issuance of a combination fixed-price and time-and-materials task order with a 1-year base period and four 1-year options. The RFQ set forth a series of performance objectives for the contractor. In addition, of relevance here, the solicitation required that:

All Contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

RFQ § C.14(c). Award was to be made on a best-value basis to the firm whose quotation would result in the most advantageous acquisition for the government considering three evaluation factors (in descending order of importance): technical and management, specialized experience, and price. RFQ § M.2.2.

The agency received quotations from Lockheed Martin, IBM, Avaya Government Solutions, Inc., and one other vendor. Contracting Officer Statement of Facts (COSF) at 3. On July 30, 2013, the agency issued a task order valued at \$67.8 million to Lockheed Martin. IBM and Avaya then protested the award, but our Office dismissed those protests when the agency indicated that it would take corrective action. B-408686, B-408686.2, Aug. 30, 2013. As part of its corrective action, the agency amended the solicitation and requested and evaluated revised quotations. When the agency, on July 30, 2014, again issued a task order to

Lockheed Martin (at a contract value of \$78 million), both IBM and Avaya again protested the award to this Office.

In its second protest, IBM alleged that “the underlying work and the agency’s needs have changed significantly within the last several months.” IBM Protest, August 11, 2014, at 2. According to the contracting officer, it was through IBM’s protest allegations that he first learned that modification P0003, issued by another contracting officer to IBM on July 24, 2014, was intended to add additional services to IBM’s incumbent contract. COSF ¶ 7. The contracting officer reports that he then contacted the program office on August 18 to obtain information about the additional services associated with modification P0003 and IBM’s protest allegations. Id.

In response, on August 25, the program office sent the procurement office an email requesting cancellation of the procurement because the solicitation no longer reflected the support currently required. Email from Agency Program Office to CO, Aug. 25, 2014. The agency then advised the parties that it was taking the corrective action of cancelling the RFQ since “its requirements have changed significantly since the solicitation was first released on 08/15/2012.” Email from Agency to GAO, Sept. 3, 2014. This Office then dismissed both IBM’s and Avaya’s protests. B-408686.3, Sept. 3, 2014; B-408686.4, Sept. 3, 2014.

On September 8, the agency extended IBM’s existing FSS task order, scheduled to end on September 29, to continue O&M services for an additional 6 months, from September 30, 2014 to March 29, 2015. See Letter from CO to IBM, Sept. 8, 2014. According to the agency’s Justification and Approval for Other Than Full and Open Competition (J&A), the 6-month extension of IBM’s contract was warranted under Federal Acquisition Regulation (FAR) § 8.405-6(a)(1)(i)(A) on the basis of an urgent and compelling need, in that any vendor other than IBM would require a minimum transition period of 90 days, resulting in a break in service. J&A at 3. This protest followed.¹

DISCUSSION

¹ In response to Lockheed Martin’s protest, the agency issued an override document in order to ensure uninterrupted contract performance. See Override Document, Sept. 29, 2014. The agency indicated in the override document that any disruption in service would severely reduce the agency’s ability to track, control and process commercial goods and conveyances entering the U.S. for the purposes of enforcing import laws and regulations, and collecting the duties and taxes owed to the federal government. Id. at 9.

Cancellation

Lockheed Martin asserts that the agency's decision to cancel the solicitation lacked a reasonable basis since, according to the protester, the changes to the statement of work did not warrant cancellation and reissuance of the solicitation. A contracting agency must have a reasonable basis to support a decision to cancel an RFQ. Progressive Servs. Corp., B-404183, B-404251.2, Jan. 11, 2011, 2011 CPD ¶ 18 at 2; WKF Friedman Enters., B-409892.2, Sept. 25, 2014, 2014 CPD ¶ 282 at 2. A reasonable basis to cancel exists when, for example, an agency concludes that a solicitation does not accurately reflect its needs. WKF Friedman Enters., *supra*. So long as there is a reasonable basis for doing so, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until offers or quotations have been submitted and evaluated. *Id.* Further, where the record reflects that there was a reasonable basis to cancel the solicitation, we will not find that the agency abused its discretion, even though it may have taken a different course by amending the solicitation. Skyline ULTD, Inc., B-408961, Dec. 27, 2013, 2013 CPD ¶ 298 at 2.

Here, the contracting officer in his contemporaneous memorandum explained that cancellation was necessitated by "foundational changes" in the agency's requirements as set forth in the cancelled solicitation, which was developed between November 2011 to September 2012. *See* Memorandum from CO to CSPD Executive Director, Aug. 22, 2014. According to the contracting officer, the changes relate to the movement from existing legacy systems to the new ACE platform. In this regard, the ACE Program is intended to be fully deployed in July 2016, and the architectural goal is to migrate onto the new ACE platform. *Id.* Thus, noted the contracting officer, the labor breakdown in the cancelled solicitation identified ACE O&M support as comprising approximately 70-85% of the required level of effort, and O&M enhancements as comprising the remaining 15-30%. *Id.*; *see* RFQ § C.2. According to the contracting officer, however, the agency now expects a "complete reversal" of these estimates, with 70% of the effort under the revised requirement supporting the new development necessary to transition from the legacy platforms to the new ACE platform. Memorandum, Aug. 22, 2014. In sum, the contracting officer concluded that in order to successfully deploy and transition the program to the new ACE platform, the previous solicitation must be cancelled and replaced by a new solicitation that included provision for the new ACE platform, "the single platform the program will be using at full deployment." *Id.*

We find the cancellation to be unobjectionable. Lockheed Martin asserts that because the previous statement of work required the deployment of new releases and the development of new lines of code, the transition to the new ACE platform was the type of change that was anticipated in August 2012. The protester, however, has made no showing that the agency was unreasonable in finding that the relative mix of the types of work required by the agency has significantly changed since the solicitation was first issued, transforming the solicitation from one requiring predominantly O&M support services, to one primarily focused on the

development and deployment of the new ACE platform. In our view, the record supports the reasonableness of the agency's assertion that the solicitation--developed well over two years ago--no longer reflected the agency's needs and, in particular, failed to reflect the current thrust of the evolving requirement, namely, the transition to the new ACE platform.

Sole-Source Extension of Existing Task Order

Lockheed Martin also challenges the agency's decision to extend the existing task order, in effect issuing a sole-source bridge contract to the incumbent, IBM. The protester asserts that the agency unreasonably concluded that no other firm, including Lockheed Martin, could satisfy the agency's critical requirement without service interruption. Lockheed Martin argues that, as a subcontractor to IBM, it has sufficient available personnel--[DELETE]--to perform the contract requirement without an interruption in service. Protester Comments, Nov. 7, 2014, at 4; see Lockheed Martin Final Quotation Revision (FQR), Fig. 4.2.1-2, Staff Expertise Table. Indeed, Lockheed Martin argues that the agency should be precluded from now asserting that Lockheed Martin's quotation fails to offer the personnel required to fulfill the requirement, given that the agency has twice previously attempted to issue this order to Lockheed Martin. Protester Comments, Nov. 7, 2014, at 4.

Orders placed under the FSS, while streamlined, are considered to satisfy the full and open competition requirements of FAR Part 6. 41 U.S.C. § 152(3) (2006 & Supp. V); FAR § 6.102(d)(3). However, to limit sources in FSS orders, ordering activities are required to justify the restriction in accordance with the procedures set out in FAR § 8.405-6. We will review an agency's use of a limited source justification under FAR part 8.4 for reasonableness. See XTec, Inc., B-405505, Nov. 8, 2011, 2011 CPD ¶ 249 at 5; Systems Integration & Mgmt., Inc., B-402785.2, Aug. 10, 2010, 2010 CPD ¶ 207 at 2-3.

Here, we find that Lockheed Martin has furnished no basis to question the agency's justification for limiting consideration for the bridge contract to the incumbent contractor, IBM. In this regard, as discussed, the agency concluded that a 6-month extension of IBM's contract was necessary because any vendor other than IBM would require a minimum transition period of 90 days, resulting in a break in service. J&A at 3. While Lockheed Martin asserts that it had sufficient, readily available staff to satisfy the agency's requirements without a break in service, we find that, in fact, Lockheed Martin's quotation provides support for the agency's decision to cancel.²

² For example, Lockheed Martin's FQR stated that Lockheed Martin would be able to "[DELETE]," id., Cover Letter at 2, and that its "[DELETE]." Lockheed Martin FQR at I-53.

Likewise, Lockheed Martin's claims with respect to available staffing also fail to rebut the agency's concerns as to a possible break in services. While Lockheed Martin argues here that it can perform the contract requirement without interruption (using [DELETE] incumbent personnel [DELETE] personnel with recent experience and additional unnamed incumbents), its quotation provides a more nuanced view of its staffing capabilities. In this regard, in its final quotation, Lockheed Martin proposed [DELETE] full-time equivalent (FTE) employees (of which at least [DELETE] were required to satisfy O&M requirements), comprised of: [DELETE]. Lockheed Martin FQR at I-1, 46, 49 to 53, Staff Expertise Table, Fig. 4.2.1-2; Lockheed Martin Price Quotation, § B.2, attach. J-1; see Agency Reply, Nov. 18, 2014, at 5. Thus, Lockheed Martin's quotation indicated that at contract start only [DELETE] of the required [DELETE] personnel (as estimated by Lockheed Martin) would have the required CBP BI clearances. Lockheed Martin FQR, Staff Expertise Table, Fig. 4.2.1-2. Further, the agency points out that [DELETE] of Lockheed Martin's proposed key personnel--including its [DELETE]--lacked the required CBP BI clearance.³ Agency Reply, Nov. 18, 2014, at 7; Lockheed Martin FQR at I-35, 49-52, Staff Expertise Table, Fig. 4.2.1-2.

Further, the agency contends that the apparent shortfall in cleared personnel available to Lockheed Martin on day one of a new contract could become an even more significant problem in light of expected delays in processing background investigations. In June 2014, the Personnel Security Division (PSD) of DHS learned of a possible data breach with a vendor contracted to provide field investigations used for initial background investigations and periodic reinvestigations. Addendum to Director of PSD Division Statement of Facts. DHS's investigation of the possible breach led it to issue a stop-work order to the vendor in question. Director of PSD Division Statement of Facts at 1. This action reduced from [DELETE] the number of contract vendors available to CBP to conduct field investigations. Id. DHS also ceased sending new work to the other contract vendors until it could examine the security of the information technology systems of those vendors. Thus, as late as October 24, only [DELETE] contract vendors performing BIs (representing 30% of the original capacity) were available. Given the resulting 2,000 BI case backlog, as well as the relatively low priority assigned contractor employees, the agency expects significant delays in processing new BI reviews. Agency Reply, Oct. 29, 2014, at 3; Director of PSD Division Statement of Facts at 1-2; Addendum to Director of PSD Division Statement of Facts at 2. Under these circumstances, the agency estimated that it could take "several months or longer" for a contractor to

³ Moreover, the agency indicates that the shortfall with respect to cleared personnel may be even greater than the above numbers suggest. Specifically, the agency estimates that [DELETE] FTEs, not the [DELETE] assumed by Lockheed Martin, are required to "keep the system operational," with even more required to fully meet the agency's requirements. Agency Reply, Nov. 18, 2014, at 6; Declaration of ACE Program Manager, Oct. 29, 2014, at 4.

bring a new employee on board. Addendum to Director of PSD Division Statement of Facts at 2.

In sum, the agency reasonably reads Lockheed Martin's quotation to require a transition period during which it would increase its staff sufficiently to meet the contract requirements. This need to increase staffing, combined with a major reduction in the agency's capability to offer such investigations, leads our Office to find that the record clearly supports the agency's conclusion that "[t]he timing required to allow a non-incumbent contractor to staff the appropriate skilled and cleared resources would cause a break in services." J&A at 3. We therefore conclude that, because Lockheed Martin's quotation depended upon background investigations that the agency, in the short term, was incapable of performing, the agency had a reasonable basis for finding that the protester could not perform the agency's requirements without a break in service, and thus a reasonable basis for issuing a sole-source extension of IBM's order.

The protest is denied.

Susan A. Poling
General Counsel