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Decision

Matter of: SupplyCore Inc.

File: B-409418.4; B-409418.5; B-409418.6

Date: April 16, 2015

William E. Hughes, Esq., Whyte Hirschboeck Dudek S.C., for the protester.
Katherine D. Sweat, Esq., Defense Logistics Agency, for the agency.
Young S. Lee, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's decision to cancel a solicitation is denied where the agency reasonably concluded that continued in-house performance would result in cost savings and efficiencies.

DECISION

SupplyCore Inc., of Rockford, Illinois, protests the Defense Logistics Agency's (DLA) cancellation of request for proposals (RFP) No. SPM7LX-14-R-0029, for supply chain integration and management of lead-acid batteries. SupplyCore contends that DLA's decision to cancel the solicitation was unreasonable.

We deny the protest.

BACKGROUND

DLA issued the RFP on November 14, 2013, on an unrestricted basis, with the intent of eliminating and reducing its current inventory of lead-acid batteries through attrition and transfer of the responsibility for supply chain management functions such as forecasting, acquisition, storage, distribution, and transportation to a supply chain integrator. RFP at 12. The RFP solicited proposals for a supply chain integrator to manage and perform all responsibilities required under the supply chain for worldwide support of current and future Department of Defense lead-acid batteries customers. Id.

The solicitation contemplated the award of a requirements type, fixed-price contract for a 5-year base period and one 2-year option. Id. at 2, 13. The RFP anticipated

award on a best-value basis based upon the following three evaluation factors, listed in descending order of importance: technical, past performance, and price. Id. at 78. The non-price factors, when combined, were significantly more important than price. Id.

The agency received eight proposals by the solicitation's February 10, 2014 closing date. Contracting Officer (CO) Statement at 2; Agency Report (AR), Tab 6, Declaration of Source Selection Advisory Council (SSAC) Chairman, at 1. Of the eight offers received, seven were included in the competitive range, including SupplyCore. AR, Tab 6, Declaration of SSAC Chairman, at 1. DLA conducted two rounds of discussions with the competitive-range offerors, and on June 27, DLA requested final proposal revisions. AR, Tab 8, Amendment 0013, at 2.

Based upon the agency's evaluation of the offerors' final proposal revisions, the SSAC and the contracting officer unanimously recommended the award of a contract to an offeror other than SupplyCore.¹ AR, Tab 6, Declaration of SSAC Chairman, at 2. Thereafter, the agency sent the presumptive awardee's price information to a DLA business analyst to conduct an acquisition business case analysis (BCA) in accordance with DLA procedures.² CO Statement at 3; AR, Tab 6, Declaration of SSAC Chairman, at 2.

After several deliberative iterations, the agency finalized its BCA on December 15.³ AR, Tab 18, Final BCA, at 1. The final analysis found that it would cost the agency \$13.8 million more to award a contract as compared to keeping the requirement in house.⁴ Id. at 1, 36. In addition, the BCA determined that "[d]ue to the high volume

¹ While SupplyCore submitted a lower-price proposal than the presumptive awardee (\$48,491,956 compared to \$60,357,028), the evaluators determined that the other offeror provided the best value to the agency based upon the solicitation's evaluation criteria. AR, Tab 6, Declaration of SSAC Chairman, at 2.

² The BCA was performed in accordance with DLA instruction 2101, which requires the agency to compare "DLA's current "as-is" (status quo) benefits and costs of doing business to the benefit and costs of viable acquisition alternatives," and is based on a methodology referred to by DLA as the Vendor Stock Retention Model (VSRM). AR, Tab 9, Defense Logistics Agency Instruction (DLAI) 2101, at 1. The purpose of a BCA is to identify the costs and benefits the agency might realize by awarding the solicitation, rather than continuing to manage the batteries in-house. Id. This analysis assists the agency in determining whether the acquisition is in the best interest of the Government. Id.

³ The solicitation here was not issued in connection with a public/private competition under Office of Management and Budget Circular A-76.

⁴ For the purposes of the final BCA, DLA assumed the 2-year option period would be exercised after the 5-year base period expired. AR, Tab 18, Final BCA, at 36.

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of deliveries for this proposed acquisition, moving Customer-Direct may compromise the efficiency of the scheduled truck network.” Id. at 1. Based on these findings, the BCA did not recommend contract award. Id. at 47.

In addition to its internal BCA, DLA also requested a BCA be performed by a private firm, which used a proprietary methodology distinct from the VSRM model used by DLA. CO Statement at 4; AR, Tab 6, Declaration of SSAC Chairman, at 2. The private firm’s BCA found an approximately \$7 million cost of awarding the contract, as compared to continuing in-house performance, after accounting for transportation and contract costs. AR, Tab 19, BCA Briefing, at 2; Tab 10, CO Declaration, at 2.

After both BCA’s were complete, DLA management received a briefing on the results of the BCA analyses. AR, Tab 19, BCA Briefing, at 2. The briefing provided the assumptions used in conducting the BCAs, as well as both the internal BCA’s finding of a \$13.8 million cost and the private company’s BCA finding of a \$7 million cost of contract award over the 7-year period of performance. Id. Thereafter, the agency determined that it would cancel the solicitation. AR, Tab 20, DLA Senior Executive Emails, at 1. On December 30, SupplyCore received the following notification from the Director of the Strategic Acquisition Directorate:

This is to advise that after much deliberation within DLA Land and Maritime, and within DLA HQ [headquarters], we have decided to cancel our Lead Acid solicitation, SPM7LX-14-R-0029. Based on a most detailed assessment of all proposals, we were unable to make a business case that would support an award for the Lead Acid requirement as defined by our solicitation.

AR, Tab 4, Cancellation Notice, at 1. SupplyCore filed its protest with our Office on January 9.

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DLA also conducted an alternative analysis, reviewing the cost of awarding the contract assuming certain fixed costs--relating to the elimination of depot warehouse space--were removed from the overall calculation. This resulted in a cost to the agency of \$4.7 million, as compared to continued in-house performance. AR, Tab 18, Final BCA, at 1. Because these costs are typically only included in a BCA if the proposed acquisition has a “significant impact on DLA infrastructure,” which the agency states is not the case here, for purposes of this decision, we do not address this alternative analysis. AR, Tab 12, Declaration of Business Analysis, at 1 (explaining depot fixed costs are not considered by DLA because the potential savings, if realized at all, are not realized until more than seven years from contract award).

DISCUSSION

SupplyCore challenges the agency's decision to cancel the procurement. The protester contends that the agency's rationale for cancelling the RFP is pretextual because DLA does not want to award it a contract. SupplyCore alleges that the cancellation is unreasonable because the final BCA was based on faulty information and improper assumptions. The agency responds that it cancelled the procurement because it was unable to make a business case in support of an award. In this regard, the agency asserts that its BCA, performed in accordance with DLA instructions, demonstrates that continued in-house performance would result in cost savings and efficiencies as compared with award under the solicitation. Based upon our review of the record, we find that the agency's cancellation was reasonable.⁵

As a general rule, our Office does not review agency decisions to cancel procurements and instead perform the work in-house, since such decisions are a matter of executive branch policy. Mastery Learning Sys., B-258277.2, Jan. 27, 1995, 95-1 CPD ¶ 54 at 2; Miller, Davis, Marter & Oppen, P.C., B-242993.2, Aug. 8, 1991, 91-2 CPD ¶ 176 at 4. However, where, as here, a protester argues that the agency's rationale for cancellation is but a pretext--that the agency's actual motivation is to avoid awarding a contract--we will examine the reasonableness of the agency's actions in cancelling the procurement. Mastery Learning Sys., *supra*, at 2-3; Griffin Servs. Inc., B-237268.2 *et al.*, June 14, 1990, 90-1 CPD ¶ 558 at 3, *recon. denied*, General Servs. Admin.--Recon., B-237268.3 *et al.*, Nov. 7, 1990, 90-2 CPD ¶ 369 at 2.

⁵ While our decision here does not specifically discuss every argument raised by SupplyCore, we have considered all of the protester's assertions and find no basis to sustain its protest. For example, the protester generally complains that the agency's "abrupt[] and inexplicabl[e]" cancellation was improper after the agency had solicited offers, evaluated proposals, engaged in discussions, requested final proposal revisions, and advised it was close to an award decision. Protest (Jan. 9, 2015). This assertion does not provide a basis to sustain the protest. See SEI Group Inc., B-299108, Feb. 6, 2007, 2007 CPD ¶ 35 at 3 (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 are submitted and protesters have incurred costs in pursuing the award). SupplyCore also argues that DLA's decision to cancel was improper because the BCA findings are allegedly in conflict with a pre-solicitation BCA that was performed by the agency. This argument does not provide a basis to sustain the protest since the pre-solicitation BCA was created by the agency for a different purpose. See AR (Feb. 25, 2015) at 3-4.

SupplyCore challenges the underlying basis of the agency's cancellation asserting that DLA unreasonably concluded that in-house performance would result in a cost savings.⁶ The protester makes three primary assertions in support of its allegation: the BCA improperly relied upon the price of the presumptive awardee, instead of SupplyCore's lower-priced proposal; the BCA unreasonably assumed a 10-percent decrease in demand; and the BCA failed to consider that the contract would be awarded on a fixed-price basis without an economic price adjustment, while the agency's costs of in-house performance are not fixed. SupplyCore contends that these flaws led the agency to skew its cost analysis in favor of in-house performance.

With regard to SupplyCore's first assertion--that it was unreasonable for the BCA to use the presumptive awardee's price, instead of the protester's, lower-priced proposal--we find no reason to question the agency's evaluation. As explained above, the purpose of the BCA was to compare the benefits and costs of performing the requirements in-house against the benefits and costs of awarding a contract. AR, Tab 9, DLAI 2101, at 1. To do this, the agency was required to select a number to represent the costs of performance to conduct the comparison. The agency chose the presumptive awardee's costs to represent the costs of performance based upon the SSAC's and contracting officer's award recommendation. While there may have been other methodologies the agency could have chosen to calculate costs for its final BCA, had the final BCA recommendation used the lowest-priced offer instead of the best-value offeror as the protester argues, such analysis would have been of little value to the agency given the solicitation's best-value award criteria, which placed significantly more importance on the non-price factors.

In light of the RFP's stated evaluation criteria, we find nothing unreasonable about the agency's decision to base its final BCA analysis on the price of the offeror identified by the SSAC and contracting officer as the best value offeror in its award recommendation. In any event, SupplyCore has not demonstrated that the use of its overall price would have resulted in a cost savings. Rather, the protester concedes that it would cost DLA almost \$2 million, as compared to continued in-house performance, if the agency was to award a contract to SupplyCore.⁷ Protest (Feb. 17, 2015), at 12.

⁶ The protester does not challenge the agency's finding that contract award might compromise the efficiency of the agency's existing truck network and material availability rates. AR, Tab 18, Final BCA, at 1. In this regard, the BCA concluded that award of a contract may effect the efficiencies of the scheduled truck network that contributed to a 91.6% material availability rate. Id.

⁷ Although the protester alleges that the alternate analysis--excluding fixed costs relating to elimination of depot warehouse space--would have resulted in a cost savings based upon SupplyCore's overall price, the alternative analyses--while
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With regard to SupplyCore's challenge to the agency's assumed decrease in demand, we likewise find the agency's evaluation unobjectionable. SupplyCore asserts that the BCA improperly assumed a 10-percent decrease in demand because offerors were not permitted to assume a similar reduction in their proposals. The protester contends "[i]f the offerors had been asked to assume a 10% reduction in demand, the Agency would undoubtedly have received substantially lower prices." Protest (Feb. 17, 2015), at 14. In response to the protester's assertions, the agency argues that the offerors were aware of the decreasing demands and were given ample information that demands were declining. AR (Apr. 8, 2015) at 2. In this regard, the agency states that offerors were provided with demand history and briefing charts from an industry day, which showed declining demands and divestiture schedules. Id. The agency also advised offerors that while demands are currently declining with troop drawdown, contractors likewise must be prepared for a surge. Id. Ultimately, the agency asserts, it was an offeror's responsibility to review all of the information provided and price their proposal accordingly. Here, we agree with the agency that offerors were aware of the declining demand and could price their proposals accordingly.

The agency also explains that its BCA included a sensitivity analysis that covered a range of demand scenarios, including a 10-percent increase in demand, which demonstrates that a savings would not be realized even if the BCA assumption of a 10-percent reduction was removed. Because the protester has not provided argument to rebut the agency's analysis in this regard, we have no reason to question the agency's calculations.

Finally, we also find unpersuasive SupplyCore's argument that the final BCA did not consider differences between the fixed-price nature of the contract and in-house performance costs that would not be fixed. The protester asserts that the final BCA required the agency to consider these differences when comparing the costs between the two alternatives.⁸ While the protester is correct that the BCA recommended that the differences should be noted when comparing the costs between the current support method and the proposed award, we cannot find support for the protester's allegation that the agency failed to take this into account

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calculated, were not considered by DLA because the cost savings would not be realized for more than seven years. See AR, Tab 12, Business Analysis Declaration, at 2.

⁸ The final BCA recognized that the proposed contract "will be a requirements contract without Economic Price Adjustment," and provided that "[t]hese differences should be noted when comparing the cost differences between the current support methods" and the proposed award. AR, Tab 18, Final BCA (Dec. 15, 2014), at 25.

in its final recommendation. In fact, the BCA cost analysis summary clearly notes that the absence of an economic price adjustment in the fixed-price contract is “a further cost benefit” of contract award. Id.

In sum, we find no basis to question the agency’s conclusion that continued in-house performance would result in cost savings and efficiencies. Accordingly, we find that the agency’s cancellation, which was based upon the results of the BCA, was reasonable. See CFM Equip. Co., B-251344, Mar. 31, 1993, 93-1 CPD ¶ 280 (potential for cost savings may constitute a reasonable basis to cancel a negotiated procurement.)

The protest is denied.

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General Counsel