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Decision

Matter of: Harmonia Holdings Group, LLC

File: B-417475.5; B-417475.6

Date: January 2, 2020

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Caleb Pearson, Esq., Department of Agriculture, for the agency.

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DIGEST

Protest of agency's decision to cancel solicitation following GAO's sustain of a prior protest is denied where the record demonstrates that the agency's decision was reasonable.

DECISION

Harmonia Holdings Group, LLC, of Blacksburg, Virginia, protests the cancellation of request for quotations (RFQ) No. 12639519Q0036, issued by the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), for information technology services. The protester contends that the agency's decision to cancel the RFQ lacks a reasonable basis and was a pretext to avoid reevaluating quotations after our Office sustained its prior protest. Harmonia Holdings Grp., LLC, B-417475.3, B-417475.4, Sept. 23, 2019, 2019 CPD ¶ 333.

We deny the protest.

BACKGROUND

On November 19, 2018, the agency issued the RFQ as a total small business set-aside pursuant to Federal Acquisition Regulation subpart 8.4 to vendors holding contracts under the General Services Administration Federal Supply Schedule No. 70 (Information Technology). Contracting Officer's Statement (COS), B-417475.3, B-417475.4, Attachment C, Revised RFQ, Dec. 18, 2018. The RFQ contemplated the issuance of a task order for information technology services to support three APHIS software systems, referred to collectively as the "Phytosanitary Certificate

Issuance & Tracking (PCIT) systems.”¹ RFQ at 2, 13-20. The RFQ contemplated the award of a task order to be performed over a base year and four option years, with an estimated value of \$15 million and a ceiling value of \$19 million. Id. at 38; COS, B-417475.3, B-417475.4, at 2. Of relevance here, the RFQ included requirements for operations and maintenance services covered by fixed-price contract line item numbers (CLINs) and development, modernization, and enhancements (DME) covered by optional unspecified CLINs. RFQ at 2-6.

On or before the January 8, 2019, closing date for initial quotations, the agency received quotations from four vendors, including Harmonia and AttainX. The agency selected AttainX for award, and Harmonia filed its first protest with our Office on April 11, challenging various aspects of the agency’s evaluation of quotations and award decision. The agency took corrective action, and we dismissed the protest as academic. Harmonia Holdings Grp., LLC, B-417475, B-417475.2, May 10, 2019, at 1 (unpublished decision). After the agency completed its corrective action and reissued the task order to AttainX, Harmonia filed a protest with our Office on June 17, again challenging various aspects of the agency’s evaluation of quotations and award decision.

On September 23, our Office sustained Harmonia’s protest. Harmonia Holdings Grp., LLC, supra. We sustained the protest on several bases under the cost/price and past performance evaluation factors; the agency’s assessment of technical weaknesses to the protester’s quotation; and the best-value tradeoff decision. Of relevance here, we concluded that the agency’s cost/price evaluation was unreasonable where it was based solely on a selective sample of hourly labor rates under the optional DME CLINs. Id. at 10-13. Our decision included the following recommendations:

We recommend that the agency reevaluate quotations and document its evaluation in a manner consistent with this decision and the solicitation. Upon completion of this evaluation, the agency should conduct a new best-value tradeoff analysis, and document a new source selection decision, in a manner consistent with this decision and the solicitation. If, after performing the reevaluation, the agency determines that a firm other than AttainX represents the best value to the government, we recommend that the agency terminate the task order awarded for the convenience of the government and make award to the firm selected, if otherwise proper.

Id. at 25.

On October 3, the contracting officer notified Harmonia that the agency had decided to cancel the RFQ and resolicit the requirement. The contracting officer stated: “I expect the new RFQ will be released next week. Because all parties involved are familiar with

¹ The three systems are: the PCIT system, the Lacey Act Web Governance System, and the Veterinary Export Health Certificate System. RFQ at 2.

this requirement, the solicitation will only be open approximately two weeks.” Protest, Exh. A, E-mail from Contracting Officer to Harmonia, Oct. 3, 2019, at 1.

Harmonia then filed this protest with our Office, alleging that the agency did not have a reasonable basis for its decision to cancel the RFQ. Protest at 3. The agency filed a request for dismissal, in which the agency asserted several reasons for its decision to cancel the RFQ. Req. for Dismissal, Oct. 30, 2019, at 1-3. Harmonia then filed a supplemental protest, arguing that those reasons were pretextual. Supp. Protest, Nov. 1, 2019, at 2-4. After our Office declined to dismiss the protest, the agency filed its report and the protester responded.

DISCUSSION

Harmonia argues that the agency’s decision to cancel the RFQ lacked a reasonable basis and was a pretext to avoid reevaluating quotations after our Office sustained Harmonia’s prior protest. Protest at 3; Supp. Protest at 2. In response, the agency asserts that it had a reasonable basis for canceling the RFQ because “the agency’s needs have changed and the agency would like to receive updated proposals.” Memorandum of Law (MOL) at 2. In this regard, the agency explains that the decision to cancel the RFQ was based on four considerations: (1) “significant time has lapsed since [the] original solicitation was released and proposals [were] received”; (2) “evaluating and making award decision on old proposals is extremely risky”; (3) “government personnel [have] changed since original solicitation”; and (4) “a revised solicitation will correct [] ambiguities in [the] prior solicitation[,] resulting in a more fair process for all parties.” COS at 3-4.

We have considered all of the parties’ arguments, including those that are in addition to or variations of those specifically discussed below, and find no basis to sustain Harmonia’s protest.

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. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. MedVet Dev. LLC, B-406530, June 18, 2012, 2012 CPD ¶ 196 at 2-3. 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, as here, quotations) have been submitted and evaluated. A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2-3.

Where, as here, a protester has alleged that the agency’s rationale for cancellation is but a pretext--i.e., that the agency’s actual motivation is to avoid awarding a contract on a competitive basis or to avoid resolving a protest--we will review the reasonableness of the agency’s actions in canceling the acquisition. Miller, Davis, Marter & Opper, P.C., B-242933.2, Aug. 8, 1991, 91-2 CPD ¶ 176 at 4. Even if it can be shown that personal animus or 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. See, e.g., Lasmer Indus., Inc., B-400855.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 4.

For example, Harmonia alleges that the agency's decision to cancel the RFQ was unreasonable because, in the protester's view, "the agency still does not know how or even if its needs have changed" and "has not decided what changes it might make to the solicitation." Supp. Protest at 4.

The protester's allegations in this regard are unsupported by the record. First, the record shows that the agency has selected a new contracting officer's representative, technical evaluation team, and source selection authority for this procurement. Agency Report (AR), Tab 10, Panel Members Selection for PCIT Contract, Oct. 7, 2019, at 1; see also AR, Tab 7, E-mail PCIT Discussion, Oct. 2, 2019, at 1-2. In a memorandum detailing its decision to cancel the RFQ, the agency asserted the following: "The new solicitation will allow for a new evaluation team and source selection authority that permits offerors to update proposals as necessary. The intent is for [a] new solicitation to be streamlined for a proposed award in mid to late November 2019." AR, Tab 8, Memorandum Concerning the Plan to Resolicit, Oct. 4, 2019, at 1.

Second, the record also shows that this new team met on October 11 and decided that resoliciting the requirement would include changes to "reflect the agency's need for more definitive pricing for the expected large amount of [DME] work." MOL at 2-3. The contracting officer further explained the following:

Pricing, as always, is an important consideration in an award decision. And, in this case[,] the pricing evaluation methodology employed for the DME CLINs was a major contention of the protest[er] which was sustained in the GAO decision. Given [the agency's] issues with properly interpreting the solicitation's price evaluation instructions, it is apparent that the path forward to correct the pricing evaluation requires not merely re[evaluating] prior proposals provided in response to the original solicitation but, rather, the correction of the pricing instructions in the solicitation to remove RFQ ambiguities and provide clear intent to all parties.

COS at 4.

While it may have been prudent for the agency to first convene its new team before announcing its decision to cancel the RFQ, the record shows that the agency has determined--after reviewing our prior sustain decision--that its prior solicitation did not reflect its needs. In this regard, we note that an agency has the discretion to determine its needs and the best way to meet them. Platinum Servs., Inc.; WIT Assocs., Inc., B-409288.3 et al., Aug. 21, 2014, 2014 CPD ¶ 261 at 5, citing USA Fabrics, Inc., B-295737, B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 4.

Specifically, the agency has represented that it intends to resolicit the requirement to incorporate changes that will include revising the pricing instructions to reflect its needs for the “expected large amount of [DME] work.” MOL at 2-3. We note that our prior decision sustaining Harmonia’s protest considered the plain language of the RFQ and found that “the RFQ did not notify vendors of the agency’s intended methodology for evaluating the optional DME CLINs, nor did it provide for the agency to be able to use these CLINs to derive any reasonable evaluation of total pricing.” Harmonia Holdings Grp., supra, at 13. To the extent the agency now believes the RFQ did not accurately reflect its needs for DME work, we cannot find that to be unreasonable, given the agency’s expressed intention of resoliciting the requirement in a manner that meets its needs.

Harmonia nonetheless claims in response that “now the agency wants to issue a new solicitation incorporating its irrational, unreasonable, and misleading price evaluation methodology.” Comments at 6-7. We fail to see any logical basis for Harmonia’s complaint, and we note that any contentions about the solicitation that the agency plans to issue are, at this time, premature. Dayton-Granger, Inc.--Recon., B-246226.2, Feb. 28, 1992, 92-1 CPD ¶ 240 at 2 (protests that merely anticipate improper agency action are speculative and premature). We also note that the fact that the agency has not finalized the exact changes that it intends to make to the RFQ’s pricing requirements does not demonstrate that the agency’s decision to cancel the RFQ is unreasonable. See, e.g., VIRE Consulting, Inc., B-408148.2, Nov. 26, 2013, 2013 CPD ¶ 272 at 4 (noting that the fact that the agency had not established the exact measure necessary to meet its requirements did not demonstrate that its decision to cancel the procurement was unreasonable or based upon an improper pretext).

As a final matter, while the record shows that the agency considered the implications of addressing the recommendations in our prior sustain decision, the protester has not shown that the agency’s decision to choose a different course of action was mere pretext. For example, in an attempt to demonstrate that the agency engaged in pretext, Harmonia raises various objections about the timing of the agency’s concerns, such as, “[i]f the agency was truly concerned with the delay . . . it could have cancelled the solicitation at any time while Harmonia’s two protests were pending[.]” Supp. Protest at 3. We find these arguments unpersuasive. As noted above, 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. A-Tek, Inc., supra, at 2-3.

Given the myriad concerns identified in our prior sustain decision, see Harmonia Holdings Grp., supra, we cannot fault the agency for choosing to start over, address its prior mistakes, and reflect on its needs. In sum, under these circumstances, we see no basis to disturb the agency’s decision.

The protest is denied.

Thomas H. Armstrong
General Counsel