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United States Government Accountability Office
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Decision

Matter of: Progressive Services Corporation

File: B-404183; B-404251.2

Date: January 11, 2011

S. Lane Tucker, Esq., and John R. Evans, Esq., Stoel Rives LLP, for the protester. Joseph R. Weidenburner, Esq., Defense Logistics Agency, for the agency. Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency reasonably canceled solicitations where the solicitations failed to fully inform vendors of the bases on which past performance would be evaluated.

DECISION

Progressive Services Corporation (PSC), of Beaverton, Oregon, protests the cancellation of requests for quotations (RFQ) SPM8E6-10-Q-2013 and SPM8E6-10-Q-2318 issued by the Defense Logistics Agency (DLA) for lumber. PSC argues that DLA canceled the solicitations as a pretext to avoid GAO's review of the protests.

We deny the protests.

The RFQs were issued for the delivery of lumber to the Defense Distribution Depot in Germersheim, Germany. RFQ -2013 at 4; RFQ -2318 at 4. RFQ -2013 sought 500,000 board feet (bf) of softwood lumber boards; RFQ-2318 sought 300,000 bf of softwood lumber boards. RFQ -2013 at 6-7; RFQ -2318 at 6-7. The RFQs provided that award would be made on a best value basis, considering price, delivery, and past performance, and that delivery and past performance were more important than price. RFQ -2013 at 2; RFQ -2318 at 2. The RFQs further provided that past performance would be determined by review of government records of prior deliveries by the offeror and quality of the material delivered. Id.

With regard to RFQ -2013, DLA issued a purchase order to Forest Products Distributors, Inc. PSC protested to our Office arguing that the agency's evaluation of its quotation with regard to past performance was unreasonable. In response, DLA

advised our Office that it had terminated the purchase order, canceled the underlying RFQ, and planned to reevaluate its requirements.¹ On September 28, we dismissed the protest as academic.

With regard to RFQ -2318, DLA issued a purchase order to Universal Forest Products, Inc. PSC protested that the agency's evaluation of its quotation with regard to past performance was unreasonable. In response, DLA again advised our Office that it had terminated the purchase order and the underlying RFQ in order to re-examine the agency's past performance evaluation methodology and to ensure that the methodology is appropriate to meet the agency's needs. On November 4, we dismissed the protest as academic.

PSC contends that DLA's rationale for canceling the two RFQs was a pretext to avoid these protests. PSC makes a number of arguments in support of its position, all of which we have fully considered, although we only address PSC's primary arguments in this decision.

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Major Contracting Servs., Inc., B-400737.2, Dec. 17, 2008, 2008 CPD ¶ 230 at 2. Where, as here, a protester alleges that an agency's rationale for cancellation is but a pretext to avoid resolving a protest, we review the agency's rationale to ensure that the agency has a reasonable basis for the cancellation. See Superlative Techs., Inc., B-310489, B-310489.2, Jan. 4, 2008, 2008 CPD ¶ 12 at 7.

DLA explains that, as a result of PSC's protests, the agency began a review of the methodology it used to evaluate quotations, and realized that the RFQ did not adequately advise offerors as to how past performance would be evaluated. AR at 8. DLA further explained that it would resolicit the procurement after its review was complete.² Id.

It is fundamental that vendors should be advised of the basis on which their quotations will be evaluated. See C3, Inc., B-241983.2, Mar. 13, 1991, 91-1 CPD ¶ 279 at 3 (involving proposals). The Competition in Contracting Act of 1984, 10 U.S.C.

¹ DLA subsequently informed our Office that, as part of the corrective action, it planned to review and revise the evaluation factors to ensure that they are appropriate to satisfy the agency's needs. DLA email, Oct. 25, 2010.

² The agency subsequently advised our Office that it did not resolicit the requirement sought under RFQ -2013. DLA email, Dec. 17, 2010. We note, however, that a similar requirement for 500,000 bf of softwood lumber boards was issued under a different requisition number less than one month after RFQ -2013 was canceled.

§§ 2305(a)(2)(A)(i) and (ii) (2006), requires contracting agencies to set forth in a solicitation all significant evaluation factors and their relative importance. Id. Here, DLA recognized as a result of PSC's protest that the RFQs did not clearly state the evaluation criteria pertaining to past performance. In this regard, DLA in recent weeks has issued multiple solicitations for lumber that contain detailed evaluation criteria for past performance. See, e.g., RFQ -0251 at 3; RFQ -0246 at 3; RFQ -0306 at 3. Specifically, the new evaluation criteria state:

The past performance evaluation will include a consideration of the following:

1. Failure to deliver by the required delivery date,
2. Number of late orders partially delivered (per order),
3. Contractor requested purchase order cancellations,
4. Quality issues or rejected material, and
5. Missed or late appointment times at the depot or missed or late container pickups (any appointment change not coordinated four (4) working days prior to the original appointment time will be considered a late/missed appointment).

Id. Correcting this error to allow for a fair and equal competition provides a reasonable basis for canceling the solicitations. Accordingly, we do not find that the agency's cancellation of the RFQs was a pretext to avoid our review.³

PSC states that it has no objection to the new evaluation criteria, but argues that DLA should evaluate past performance based on volume of product delivered, types of product delivered, numbers of trucks and delivery slots, and government-caused depot delays. In this regard, PSC generally challenges solicitation terms without identifying specific solicitations, thus lacking the specificity needed to provide a valid basis for protest. See 4 C.F.R. §§ 21.1(c) and 21.5(f) (2010).

To the extent that PSC argues that the actions taken by DLA do not address the specific grounds of its initial protests, an agency may take corrective action where it

³ The facts of this case are inapposite to those of our decision in Security Consultants Group, Inc., B-293344.2, March 19, 2004, 2004 CPD ¶ 56, where the agency's corrective action amending the solicitation after award to the protester to correct a solicitation defect (failure to disclose the intended weights of the three technical evaluation factors) and soliciting revised proposals was improper where the protester's price was disclosed and where we found there was no reason to believe that the offerors were prejudiced. Here, the protester's price has not been disclosed and there was a reasonable possibility of prejudice, given the flaws identified by the agency with respect to the evaluation scheme included in the initial solicitations.

has reasonable concern that there were errors in the procurement.⁴ See Alfa Consult S.A., B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 2.

The protests are denied.

Lynn H. Gibson
General Counsel

⁴ To the extent that PSC continues to argue the merits of its original protest grounds relating to DLA's evaluation of its quotations responding to RFQs -2013 and -2318, our finding that DLA's cancellation of the original RFQs was reasonable renders these arguments academic. See Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132 (cancellation of a solicitation renders protest academic).