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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-218619

**DATE:** July 29, 1985

**MATTER OF:** Business Communications Systems, Inc.

**DIGEST:**

1. In a negotiated procurement, cancellation of a solicitation requires only a reasonable basis as distinguished from the cogent and compelling reason required to cancel a formally advertised solicitation after bid opening.
2. Reasonable basis exists to cancel an RFP where the contracting agency discovers that its needs can be met through a less expensive approach than that called for in the RFP.
3. Protest that General Services Administration (GSA) intended to force procurement of telecommunications equipment into GSA channels is denied where protester does not present well-nigh irrefutable proof that GSA had specific and malicious intent to harm protester.

Business Communications Systems, Inc. (BCS) protests the cancellation of request for proposals (RFP) No. DCXOH-85-009 issued by the Administrative Office of the United States Courts (Administrative Office) for telecommunications equipment and related services for the United States District Court for the Eastern District of Virginia at Norfolk (the court). BCS contends that the cancellation of the RFP and subsequent purchase of equipment under a General Services Administration (GSA) equipment contract violate requirements for competition in the Competition in Contracting Act of 1984, Pub. L. No. 98-369, § 2711, 98 Stat. 1175 (1984); that the Administrative Office did not have a compelling reason to cancel the solicitation; and that GSA intended to force this procurement into GSA channels.

We deny the protest and claim for proposal preparation costs and costs of filing this protest.

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On February 8, 1985, the Administrative Office issued an RFP for the provision of a Private Automatic Branch Exchange (PABX) system to the court. The court offices, located in a building with 14 other federal agencies, had been receiving telephone service on a consolidated system provided by GSA. The Administrative Office had determined, based on a feasibility study, that procurement of a PABX was the most cost-effective method of providing telephone service to the court. The installation and purchase cost of the PABX was estimated at \$176,702.

By letter dated March 27, 1985, GSA informed the Administrative Office that it was denying the Office's January 17 request for concurrence in the proposed procurement. GSA noted that the Administrative Office did not need approval from GSA to acquire the equipment and service, but indicated that additional costs to the government would result from the proposed procurement. GSA pointed out that the Administrative Office had not included \$199,035 in Federal Telecommunications Service (FTS) access costs in its original cost estimate for the project. These costs were based on GSA's determination that the PABX system would tie into the FTS system through an exclusive-use switch in Faulknor, Maryland.

Based on GSA's figures, the Administrative Office determined that a PABX system was not cost-effective. The Administrative Office decided instead to purchase different equipment under GSA's Purchase of Telephone and Services (POTS) contract, a competitively awarded, indefinite-quantity/indefinite-delivery contract which federal agencies may use for the purchase of telephones, other equipment and related services. The Administrative Office estimates the cost to purchase and install this equipment is \$278,023; the \$199,035 in FTS access costs is not included in this estimate because the system will tie into its present switch in Norfolk, Virginia.

The protested RFP was canceled on April 30, after the March 15 closing date for submission of offers. Three proposals had been received, but not yet evaluated. Offerors were told that GSA would not guarantee FTS access, that a PABX system was no longer cost effective based on GSA's figures, and that, since the court required the telephone equipment be installed in less than 60 days, upgraded telephone equipment would be purchased from GSA's POTS contract.

BCS, contending that cancellation of the solicitation and purchase of the equipment through the POTS contract violated competition requirements of the Competition in Contracting Act of 1984, cites a portion of § 2711 of the Act which states that:

"(5) In no case may an executive agency--

(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

(B) procure property or services from another executive agency unless such other executive agency complies fully with the requirements of this title in its procurement of such property or services."

The Administrative Office argues that the provision in question is inapplicable to this procurement because the Administrative Office is not an "executive agency." In any event, we note that according to GSA's administrative report filed with our Office, the POTS contract under which the Administrative Office procured its equipment was advertised in the Commerce Business Daily and competitively awarded.

BCS also contends that the reasons for cancellation of the solicitation are not compelling. However, in a negotiated procurement, such as the one here, cancellation of a solicitation requires only a reasonable basis, as distinguished from the cogent and compelling reason required to cancel a formally advertised solicitation after bid opening. Management Services Inc., B-197443, June 6, 1980, 80-1 C.P.D. ¶ 394. The Administrative Office determined, based upon GSA cost figures available at the time of its decision, that the POTS contract for the purchase of equipment was a less costly alternative than the acquisition of a PABX system to meet the court's needs. We have recognized that the potential for cost savings is a legitimate basis for canceling a negotiated solicitation. Science Information Services, Inc., B-205899, June 2, 1982, 82-1 C.P.D. ¶ 520. In light of the potential savings associated with using the POTS contract, we believe the Administrative Office had a reasonable basis for canceling the solicitation.

BCS also alleges that GSA intended to force this procurement into GSA channels. BCS cites the contracting officer's explanation for the cancellation, which states that GSA had non-concurred in the request to obtain PABX equipment, that GSA had provided heretofore unavailable cost data, that GSA would not guarantee FTS access, and that procurement of telephone equipment for the Norfolk courthouse would be through GSA. The Administrative Office responds that the record reveals only that GSA would not allow access to the FTS system under an alternative that was not cost-effective, which falls far short of proof of unfair motives. BCS counters that costing was weighted against the PABX system, and that the suggested alternatives favored GSA-sponsored or GSA-designed systems.

A protester, of course, has the burden of proving its case; we will not attribute improper motives to procurement personnel on the basis of inference or supposition. Serv-Air, Inc., B-216582, Jan. 16, 1985, 85-1 C.P.D. ¶ 42. Contracting officials are presumed to act in good faith, and a party attempting to show otherwise must present well-nigh irrefutable proof that they had a specific and malicious intent to harm the party. See Julie Research Laboratories, Inc., B-210435.2, Feb. 14, 1985, 85-1 C.P.D. ¶ 196.

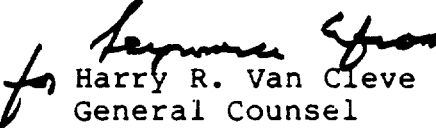
BCS's allegations do not rise to this level of proof. GSA advised the Administrative Office that the Administrative Office did not require approval from GSA to acquire telecommunications equipment and services. GSA noted, though, that based on its cost analysis, it did not concur with the proposed procurement of a PABX. GSA then merely reiterated the regulatory guidance of the Federal Information Management Resources Regulation, § 201-39.007, 50 Fed. Reg. 4397 (1985) (to be codified at 41 C.F.R. § 201-39.007), that it would approve or disapprove an Administrative Office request for direct access to the FTS based on cost effectiveness to the government. These facts do not show that GSA acted improperly regarding the proposed procurement; neither does the fact that the Administrative Office itself decided to meet the court's requirements by purchasing equipment under the POTS contract indicate that GSA intended to force this procurement into GSA channels.

As to BCS's allegation that costing was weighted against the PABX system because FTS access costs were included in the cost analysis of the system, the Administrative Office's report to us indicates that GSA assessed such costs because it determined the court's PABX system

would tie into the FTS system through a switch located in Faulknor, Maryland, rather than a switch in Norfolk. BCS maintains that FTS access is almost certainly available in the court building. However, it is GSA's policy that systems such as the PABX are not suitable for connection to the switch in Norfolk due to the loss in quality of transmission and must be connected to the Faulknor, Maryland switch. In essence, BCS is disagreeing with GSA's technical judgment. A protester's mere disagreement with an agency's technical conclusions does not render the conclusions unreasonable. See U.S. PolyCon Corp., B-214791, Oct. 16, 1984, 84-2 C.P.D. ¶ 412. Thus, in the absence of more probative evidence, we must conclude that BCS has not met its burden of proof to show that GSA intended to force this procurement into GSA channels.

BCS claims proposal preparation costs and the costs of filing this protest. Our Bid Protest Regulations provide for recovery of costs only where a protest is found to have merit. 4 C.F.R. § 21.6(d) (1985). Since we made no such finding here, BCS's request is denied.

BCS's protest and claim are denied.

  
for Harry R. Van Cleve  
General Counsel