



Decision

Matter of: Major Contracting Services, Inc.

File: B-400737.2

Date: December 17, 2008

Merrill D. Austin for the protester.

Capt. Charles D. Halverson, Department of the Army, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Corrective action (consisting of terminating the protested award, canceling the solicitation, issuing a new solicitation, obtaining proposals, and making a new selection decision) taken by an agency in response to a prior protest is reasonable where the agency needs to evaluate offerors' ability to meet contract specifications but the solicitation failed to require offerors to submit technical proposals.

DECISION

Major Contracting Services, Inc. (MCS) of Colorado Springs, Colorado, protests the cancellation of request for proposals (RFP) No. W911SG-08-R-0007, issued by the Department of the Army for chemical latrines and wash stations. The Army's decision to cancel the RFP was the result of corrective action taken in response to MCS's earlier protest (B-400737) objecting to the award of a contract to Vantex Service Corporation. MCS contends that the Army should award the contract to MCS rather than resolicit this requirement and also requests that we find MCS to be entitled to its proposal preparation and bid protest costs.

We deny the protest.

The RFP was issued as a combined synopsis and solicitation for temporary and permanent portable chemical latrines and wash stations at Fort Bliss, Texas and stated that award was to be made to the offeror whose proposal was "most advantageous to the government, price and other factors considered, including past performance," and that the agency would also evaluate offerors' "ability to meet specifications." To be considered for award, offerors were required to submit a completed copy of the standard "Offeror Representations and Certifications --

Commercial Items” clause in Federal Acquisition Regulation (FAR) § 52.212-3 and unit prices for all line items including option years, and to be able to meet the required delivery schedule. RFP at 3.

Proposals were received from MCS and Vantex. The Army selected Vantex’s proposal for award and informed MCS that its proposal did not describe how the firm would perform the requirements at Ft. Bliss. MCS protested to our Office, complaining that it had submitted all information required by the RFP and that, because the RFP did not require offerors to submit technical proposals, the Army had unreasonably downgraded MCS’s proposal for failing to explain how the firm would perform the work.

In response to the protest and prior to submitting its agency report regarding the propriety of its actions, the Army notified our Office and the parties that it would take corrective action by terminating the current award, issuing a new solicitation that clarified the requirement, receiving new proposals, and making a new award decision. We found that the Army’s corrective action rendered academic MCS’s protest of the award to Vantex, and dismissed MCS’s protest.

MCS complains that the Army has no reasonable basis for canceling the RFP and resoliciting the requirements because the contracting officer “stated that there was no reason to believe that [the] Protester could not meet the requirements of the intended Contract” and the protester submitted the lowest priced offer.¹ Comments at 1.

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. Patriot Contract Servs. LLC et al., B-278276.11 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 4. We will not object to the specific proposed corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3.

Here, the Army agrees with the protester that the RFP did not request or require offerors to submit technical proposals. The agency explains, however, “that it needs each offeror to submit a technical proposal that describes how that offeror intends

¹ MCS also complained that resoliciting this requirement would prejudice MCS because other offerors “are now fully aware of [its] pricing structure.” The protester, however, does not explain why it believes other offerors are aware of its pricing structure, other than to assert that “it is unknown exactly who has access or who has been provided with copies of [its prices].” Protest at 1. In any event, the Army explains in its report that the agency disclosed only the awardee’s price to other offerors in its award notices. Agency Report at 4 n.2.

to meet the requirement” in order “[t]o ensure that the Army’s requirements are properly and effectively met.” Agency Report at 4. In addition, the agency explains that its proposed corrective action will ensure a full and open competition by allowing all interested offerors to submit proposals.

We find no basis to object to the Army’s proposed corrective action. Although the RFP informed offerors that the agency would evaluate, among other things, the offerors’ ability to meet the contract specifications, the agency’s ability to make such an assessment was hindered by the failure of the solicitation to require the submission of technical proposals. Under the circumstances, we conclude that the agency reasonably determined that it should cancel the RFP and resolicit after clarifying its requirements.

With respect to the protester’s request that we find the firm entitled to reimbursement of its proposal preparation and protest costs, where an agency takes corrective action prior to our issuing a decision on the merits, we may recommend that the protester recover the reasonable costs of filing and pursuing the protest, where we conclude that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2008); Georgia Power Co.; Savannah Elec. and Power Co.–Costs, B-289211.5, B-289211.6, May 2, 2002, 2002 CPD ¶ 81 at 5. Where, as here, however, an agency takes corrective action prior to the submission of its report on a protest, we have generally not found the agency’s corrective action to be unduly delayed. See Smith & Wesson, Inc., B-400479, Nov. 20, 2008, 2008 CPD ¶ 215 at 2 n.1. In any event, our Regulations do not provide for our recommendation that an agency reimburse a protester for its proposal preparation costs where the agency decides to take corrective action prior to our issuing a decision on the merits.² 4 C.F.R. § 21.8(e); Yardney Tech. Prods., Inc.–Costs, B-297648.3, Mar. 28, 2006, 2006 CPD ¶ 65 at 5. We deny MCS’s entitlement request.

The protest is denied.

Gary L. Kepplinger
General Counsel

² Moreover, we generally would not recommend the reimbursement of proposal costs in a decision on the merits of a protest, where, as here, the protester would have an opportunity to compete for the requirement under a reopened competition. Rockwell Elec. Commerce Corp.–Mod. of Recommendation, B-286201.8, Mar. 5, 2002, 2002 CPD ¶ 47 at 2.