

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: VIRE Consulting, Inc.

File: B-408148.2

Date: November 26, 2013

Ralph Avery, Esq., Avery Law Firm, for the protester.
David A. Ingold, Esq., Internal Revenue Service, for the agency.
Christopher L. Krafchek, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of an agency's cancellation of a solicitation following corrective action in response to a protest is denied, where the record demonstrates that the cancellation was reasonable.

DECISION

VIRE Consulting, Inc. (VIRE), of Washington, D.C., protests the cancellation of request for quotations (RFQ) No. TIRNO-12-Q-00261, issued by the Internal Revenue Service (IRS) for information technology support services.

We deny the protest.

BACKGROUND

On September 7, 2012, the IRS published a notice of intent to make a sole-source award to Trinity Software Solutions, Inc. (Trinity) for information technology services in support of the IRS Modernization, Operation and Maintenance, and Production systems. Agency Report (AR), Tab 1, Notice of Intent to Award Sole-Source Contract (Sept. 17, 2013), at 1. The notice invited prospective vendors to express their interest in the requirement and submit capability statements. Id. at 2. The notice stated that the agency anticipated award of a contract with a 12-month base period and a six-month option. Id. at 4. After receiving several responses to the notice, the agency decided to hold a competition for the requirement, rather than make a sole-source award. Contracting Officer's Statement (COS), at 2.

On January 16, 2013, the IRS issued the RFQ for information technology support services as a small business set-aside under the General Services Administration Federal Supply Schedule, pursuant to Federal Acquisition Regulation Subpart 8.4. RFQ at 1. As relevant here, the RFQ anticipated issuance of a task order with a performance period of 12 months, followed by one 6-month option period. RFQ at 10. The agency received quotes from several firms, including VIRE.

At the conclusion of its evaluation, the agency established a competitive range that did not include VIRE. Protest at 2. VIRE filed a protest with our Office on March 29, challenging its exclusion from the competitive range. The agency elected to take corrective action in response to the protest by including VIRE in the competitive range. AR, Tab 3, Email from Agency Counsel (Apr. 12, 2013), at 1. Our Office dismissed the protest as academic. VIRE Consulting, Inc. B-408148, Apr. 15, 2013, at 1.

The agency explains that, prior to holding discussions with VIRE, it became aware of concerns regarding whether the RFQ would satisfy the agency's requirements. AR, Tab 9, Internal Agency Email (June 27, 2013), at 1. The agency was also concerned about whether the same office responsible for preparing the requirements in the RFQ would continue to manage the project going forward. Id. Notwithstanding these concerns, the agency was actively planning to hold discussions with VIRE and evaluate vendors' quotations. Id.

On July 10, agency representatives met to discuss the RFQ's period of performance. AR, Tab 11, Internal Agency Email (July 16, 2013), at 1. The agency determined that the performance period of the RFQ should be changed to a base period of six months with four 1-year options. AR, Tab 11, Meeting Minutes (July 10, 2013), at 2. The agency also determined that "transition costs need to be added to the front end and back end" of the solicitation, that a new point of contact was necessary, and that a new transition estimate was required. Id. Finally, the agency decided that "the goal is to bring VIRE back into the competitive range; after this has taken place, we can determine the next course of action." Id.

On or about August 16, the IRS advised vendors that, due to significant changes in the agency's requirements, it would cancel the RFQ and issue a revised solicitation. AR, Tab 7, Agency Email to the GAO (Aug. 19, 2013), at 1. On August 20, the agency officially informed VIRE that the RFQ was cancelled. AR, Tab 8, Notice of Cancellation, at 1. This protest followed.

DISCUSSION

VIRE primarily argues that the agency's cancellation of the RFQ was a pretext to avoid awarding a contract to the protester on a competitive basis.¹ Protest at 4. In an attempt to demonstrate that the agency engaged in pretext and reflected an "improper motivation," the protester points to the fact that, notwithstanding VIRE's performance on a related contract for the same or similar services for the agency, the sole source justification for award to Trinity indicated that the agency "was unaware of any other small business with the capabilities" the agency sought to procure. Id. VIRE further argues that it would be more efficient for the agency to proceed with award, rather than cancel the procurement. Id. at 4-5. The protester also argues that the IRS cannot demonstrate that the decision to cancel the procurement is reasonable because it has not yet determined the exact length of time the RFQ's performance period must be expanded to meet its minimum requirements. Protester's Comments (Oct. 3, 2013), at 2-4.

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.

However, 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 closely examine 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. Notwithstanding such closer scrutiny, and even if it can be shown that personal animus or pretext may have supplied at least part of the motivation to

¹ In its protest, VIRE also argued that the agency has improperly awarded multiple de facto sole-source subcontracts to Trinity through an existing indefinite-delivery/indefinite-quantity contract with Computer Science Corporation (CSC). Protest at 2, 5-6. The agency responded in its report that CSC, as the prime contractor, is responsible for selecting its subcontractors, and the IRS is not in privity of contract with Trinity. Agency Legal Memorandum, at 4-6. VIRE did not further discuss this contention in its comments responding to the report and, therefore, we deem these issues abandoned and will not consider them further. See International Mgmt. and Commc'ns Corp., B-272456, Oct. 23, 1996, 96-2 CPD ¶ 156 at 2-3 n.2.

cancel the procurement, the reasonableness standard applicable to cancellation of a solicitation remains unchanged; cancellation of a procurement is reasonable where the agency determines that it no longer has a requirement for the item solicited, or where the agency discovers an existing contract for its requirement would be more advantageous to the government than continuing with the procurement. Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 3.

Here, we do not find that the record shows that the agency was motivated by a desire to avoid awarding the contract on a competitive basis or avoid resolving a protest. Id. First, the record does not support VIRE's argument that the agency's notice of intent to make a sole-source award to Trinity demonstrates that the agency's cancellation of the RFQ was based upon an improper pretext. At best, the record only establishes that the agency's sole source justification incorrectly found that there was only one responsible source that could meet the agency's requirement. This is not "indicia of an improper motivation by [the] IRS to award a contract to Trinity on a preferential basis," as VIRE contends. Protest at 4. In fact, the record establishes that instead of proceeding with award to Trinity, the agency, after receipt of several capability statements from industry, issued the RFQ, conducted an evaluation, and established a competitive range with the full intent of entering discussions with those vendors. COS at 2-4. Moreover, the contemporaneous record reflects that the agency fully intended to enter discussions with VIRE until the agency concluded that its requirements had changed. AR, Tab 11, Meeting Minutes (July 10, 2013), at 2. On this record, the agency's initial intent to award a sole-source contract to Trinity does not show that its subsequent cancellation of a competitive procurement for these requirements was improper.

Second, and contrary to VIRE's argument, the fact that the IRS has not established the exact length of time necessary to meet the agency's minimum requirements does not demonstrate that the agency's decision to cancel the procurement is unreasonable or based upon an improper pretext. The issue is not whether the agency has yet determined the required performance period. Rather, the issue is whether the agency's determination that the performance period needed to be increased, and therefore necessitated the cancellation, is reasonable. In this case, where the agency determined that the RFQ needed to be significantly changed to increase the performance period, add transition costs, establish a new agency point of contact, and conduct a new transition estimate, AR, Tab 11, Meeting Minutes (July 10, 2013), at 2, there was a reasonable basis to cancel the procurement. We see no basis to disturb the agency's decision.

The protest is denied.

Susan A. Poling
General Counsel