



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: MetroStar Systems, Inc.

File: B-408870.3

Date: September 5, 2014

Matthew R. Keller, Esq., and Kevin M. Carson, Esq., Odin Feldman Pittleman PC, for the protester.

Thomas Tinti, Esq., Department of Defense, Defense Media Activity, for the agency. Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly cancelled solicitation is denied where record shows that fundamental changes in the agency's information technology architecture developed and implemented after the solicitation was issued resulted in a reasonable determination by the agency that its earlier solicitation no longer accurately reflects the agency's requirements.

DECISION

MetroStar Systems, Inc., of Reston, Virginia, protests the cancellation of request for proposals (RFP) No. HQ0516-13-R-0001, issued by the Department of Defense, Defense Media Activity (DMA) for information technology (IT) services. MetroStar maintains that the cancellation was improper.

We deny the protest.

The RFP, a small business set-aside, contemplated the award of a fixed-price contract for a base year and up to three 1-year options to provide various on-site IT services, principally at the agency's headquarters location at Fort George Meade, Maryland. The RFP contemplated award on a "best value" basis, considering price and several non-price factors which, collectively, were deemed significantly more important than price. RFP at 55.

The agency received a number of proposals in response to the solicitation. The agency evaluated those proposals, established a competitive range, engaged in discussions with the competitive range offerors, and solicited, obtained and

evaluated final proposal revisions, which were submitted in August 2013. On August 30, the agency selected a concern known as Vykin Corporation, finding that its proposal offered the best value to the government. Agency Report (AR), exh. 15, Initial Source Selection Decision Document.

After being advised of the agency's selection decision, MetroStar and another unsuccessful offeror filed protests in our Office challenging the agency's evaluation of proposals and selection of Vykin. In response to those protests, the agency submitted a letter to our Office dated September 18, representing that it intended to take corrective action by reevaluating proposals and making a new source selection decision. AR, exh. 29, Corrective Action Letter. Based on the agency's proposed corrective action, we dismissed those protests as academic on September 19.

Approximately eight months passed after we dismissed the earlier protests. During this period of time, MertoStar was asked, by letter from the agency dated March 19, 2014, to extend the validity of its proposal until May 31 due to delays associated with the reevaluation of proposals. Letter of Protest, exh. E, March 19, 2014, Letter to MetroStar. MetroStar agreed to the agency's request that it extend the validity of its proposal until May 31. Thereafter, on May 27, the protester corresponded with the agency by e-mail, stating as follows:

I am writing to follow up on the DMA Onsite IT opportunity, the end of the month is approaching and I wanted to see if MetroStar needs to extend our validity period again on our proposal. Please let me know if anything needs to be done and I will execute accordingly.

Letter of Protest, exh. D., e-mail from MetroStar's President to DMA, May 27, 2014. The record shows that the agency responded on that same day, sending MetroStar an e-mail explaining that the agency had cancelled the solicitation based on substantial changes made to the performance work statement after the RFP had been issued. Id., exh. A, e-mail from the Contracting Officer to MetroStar's President, May 27, 2014. After being advised of the agency's decision to cancel the solicitation, MetroStar filed its current protest in our Office.

In its initial protest, MetroStar contended that the agency failed to engage in the corrective action it originally proposed to take, namely, to reevaluate proposals and make a new source selection decision. We dismiss this aspect of MetroStar's protest because it is not factually supported by the record. Our Bid Protest Regulations, 4 C.F.R. § 21.5(f) (2014) contemplate that we may dismiss any allegation that fails to state a legally sufficient basis for protest. Here, MetroStar's original protest maintained that the agency failed to perform the corrective action that it had promised. In response to that allegation, the agency produced a report that included detailed information showing that, in fact, the agency had performed a detailed reevaluation of proposals, and also had supplemented its evaluation of the offerors' past performance. AR, exhs. 16, 17, 18 (Individual and Consensus

Technical Reevaluation Reports); exhs. 25, 28 (Supplemental Past Performance Information Reports). The record also shows that the agency prepared a new source selection decision document making a new source selection decision. AR, exh. 19, Draft Corrective Action Source Selection Decision Document. The record therefore shows that MetroStar's allegation is without a factual basis and, accordingly, we dismiss this aspect of the protest.

MetroStar contended for the first time in its comments responding to the agency report that the agency unduly delayed taking its proposed corrective action. We dismiss this aspect of MetroStar's protest as untimely. In this connection, our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), require protesters to file within 10 days of when they know or should know of their basis for protest. Here, MetroStar was aware at the time it filed its current protest of the amount of time that had elapsed (approximately 8 months) since the dismissal of its previous protest. To the extent MetroStar thought this amount of time constituted an unreasonable delay in the agency's implementation of its proposed corrective action, it was required to raise this allegation, at the very latest, when it filed its current protest. Because MetroStar did not raise this contention until it filed its comments in response to the agency report, we conclude that the argument is untimely.¹

MetroStar alleges that the agency's decision to cancel the RFP is merely a pretext to avoid making award to the protester. In response, the agency has advanced four separate reasons for its decision to cancel the RFP: (1) It is decommissioning its unclassified Defense Imagery Server and transferring the server's content to a commercial provider, so that IT support for the Defense Imagery Server, and correspondingly, the fundamental approach to how the agency manages its records, will no longer be necessary; (2) New Defense Information Systems Agency (DISA) cybersecurity guidance requires DMA--and its contractor personnel--to be accredited using newer, more stringent standards that were not included under the RFP, and these added requirements will have a significant impact on offerors' prices; (3) DMA now intends to eliminate ownership and operations of DMA-specific networks, systems and services in favor of either Defense Enterprise services (for example, Defense Enterprise e-mail services) or similar commercial service, thereby resulting in a commensurate reduction in the amount of support for DMA-

¹ We point out as well that MetroStar apparently was contemporaneously unconcerned with the amount of time that the agency was taking to implement its corrective action. As noted, MetroStar agreed to extend the validity of its proposal in March 2014, some 6 months after the agency proposed its corrective action. In addition, on May 27, when the period during which MetroStar had agreed to extend the validity of its proposal was drawing to an end, the firm spontaneously offered to extend its proposal's validity yet again. In short, at no point during this approximately eight-month period did MetroStar express any concern regarding the amount of time that it was taking the agency to implement its corrective action.

specific IT services that will be required; and (4) the agency has implemented a new, enterprise-wide, worldwide, centralized IT architecture that calls for a fundamentally different level of support from any prospective contractor. AR, exh. 35, Memo from Requiring Activity Detailing Reasons for Cancellation. MetroStar essentially maintains that none of these reasons provides a reasonable basis for cancelling the RFP.

A contracting agency must have a reasonable basis to support a decision to cancel a solicitation. VIRE Consulting, Inc., B-408148.2, Nov. 26, 2013, 2013 CPD ¶ 272 at 3. 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. An agency properly may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until offers have been submitted and evaluated. A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2-3.

Where, as here, a protester alleges that the agency's rationale for cancellation is a pretext, that is, 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 & Oppen, P.C., B-242933.2, Aug. 8, 1991, 91-2 CPD ¶ 176 at 4. Notwithstanding such closer scrutiny, the reasonableness standard applicable to cancellation of a solicitation remains unchanged. Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 3.

Here, the record shows that any one of the four reasons articulated by the agency provides a reasonable basis for its decision to cancel the RFP. We discuss one for illustrative purposes.

As noted, the agency explains that it has significantly altered its technical architecture. According to the agency, whereas previously DMA's technical architectures have been highly decentralized and heterogeneous, DMA has developed what it characterizes as an "end-state" technical architecture that seeks to unify its global enterprise, standardize its systems and operations, and provide a common level of service across the agency. AR, exh. 35, Memo from Requiring Activity Detailing Reasons for Cancellation, at 1. DMA explains that, while the earlier RFP contemplated IT support services principally at its Fort Meade location, as a result of this change in the agency's IT architecture, its current requirement is for contractor support on a global, enterprise-wide basis at some 34 locations worldwide, and also is for contractor support in connection with core media functions throughout the DMA enterprise. Id.; see also, AR, exh. 33, First Declaration of DMA's Director of Technical Services at 1-2. The agency's Director of Technical Services elaborates as follows:

The changes in the revised PWS regarding increased centralization and global IT support are well beyond "changes in formatting." They reflect a radical departure from the previous requirement, involve a shift toward the complex performance of an Enterprise Technical Architecture, which include online monitoring and technical support capabilities created in a linked environment, where all locations are on the supported network and managed daily.

Additionally, DMA's requirement for contractor implementation and management of Unified Communications and comprehensive, online real-time collaboration across all locations within the enterprise were clearly never identified by DMA nor addressed in the solicitation, as infrastructure to support such capabilities did not exist and had not yet been designed and approved. However, this is a very real requirement

Second Declaration of DMA's Director of Technical Services at 2.

MetroStar has neither explained nor demonstrated how this fundamental change in the agency's IT architecture--and correspondingly, the fundamental change in the agency's contract-related requirements--can be satisfied under the prior RFP.² Simply stated, the record here shows that the agency has implemented a drastic change in its IT architecture that will result in basic changes to any requirement it may have for contractor support.³ MetroStar has provided us no basis to conclude that the agency acted unreasonably in cancelling the RFP.

The protest is denied.

Susan A. Poling
General Counsel

² We point out as well that, consistent with its decision to cancel the underlying RFP, the agency also terminated for the convenience of the government the contract originally awarded to Vykin. AR, exh. 42, Modification terminating the Vykin Contract for the Convenience of the Government.

³ The protester suggests that the agency erred in even issuing the solicitation in light of this significant change to the agency's IT enterprise architecture because the agency was aware that this change would be occurring as early as the summer of 2013. However, the record shows that the agency's new architecture design was not formalized until March 2014. Second Declaration of DMA's Director of Technical Services at 1.