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Decision

Matter of: QBE LLC

File: B-421737.2

Date: October 26, 2023

John R. Tolle, Esq., and H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.

Colonel Frank Yoon, Heather L. Thom, Esq., and Ashley R. Ruhe, Esq., Department of the Air Force, for the agency.

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DIGEST

Protest that agency improperly canceled solicitation is denied where the record demonstrates that the agency reasonably determined that the solicitation no longer reflected its requirements.

DECISION

QBE, LLC, a small business of Haymarket, Virginia, protests the cancellation of a request for proposals (RFP), issued by the Department of the Air Force, for all management, technical, and non-technical skills needed for modernizing and hardening allied digital infrastructure.¹ The protester contends that the agency failed to provide a reasonable basis for the cancellation.

We deny the protest.

BACKGROUND

In the fall of 2021, the Department of the Army's Program Executive Office Enterprise Information Systems asked the Air Force to provide foreign military sales acquisition and contracting assistance for the requirement at issue here, referred to as the program

¹ The agency did not assign an identification number to the solicitation; it refers to it in the record as "Contract No. FA7146-23-D-0002 Request for Proposal." Memorandum of Law (MOL) at 1.

management office support acquisition. Contracting Officer's Statement (COS) at 2. The scope of the acquisition included all management, technical, and non-technical skills adequate for modernizing and improving the security of digital infrastructure of countries allied with the United States. *Id.*

The Air Force conducted the procurement under the Foreign Military Sales (FMS) program, which is authorized by the Arms Export Control Act, 22 U.S.C. § 2751. The FMS program was designed to promote the policy of the United States to facilitate the common defense by entering into international arrangements with friendly countries to achieve specific national defense requirements and objectives of mutual concern. 22 U.S.C. § 2751. Sales under the program are conducted using formal contracts, termed "letters of offer and acceptance" (LOAs) between the United States government and authorized foreign purchasers. Under the FMS program, if a foreign government provides written direction requesting a specific source for services it is procuring--including in the form of an LOA--the requirement may be procured on a non-competitive basis. 10 U.S.C. § 3204(e)(4)(E); Defense Federal Acquisition Supplement (DFARS) provision 206.302-4; see also Federal Acquisition Regulation (FAR) 6.302-4(b)(1).

In March 2022, the Army provided the Air Force with a performance work statement (PWS) for the acquisition. COS at 2. The Air Force then posted a sources sought notice on the System for Award Management website to assess industry interest and capability for the requirement. *Id.* at 2-3. When the posting closed on April 1, 2022, the Air Force had received responses from four interested firms, including the protester.² *Id.* at 3.

Subsequently, in January 2023, the Army informed the Air Force that it would provide LOAs to support the direct award of an indefinite-delivery, indefinite-quantity (IDIQ) contract to QBE. COS at 3. The Army expected to have LOAs from three countries requesting support from QBE.³ *Id.* The Army requested that the Air Force issue an IDIQ contract because it could not determine the precise quantity of services that would be needed. *Id.* at 4. The Army intended to issue task orders under the IDIQ contract to QBE for additional countries when a foreign government executed an LOA and directed support from QBE. *Id.* Based on the executed and anticipated LOAs, the Air Force initiated a sole-source award to QBE. *Id.* at 4. The Air Force described the authority for the contract as follows: "There are multiple LOAs and [letters of request (LORs)] [] requesting the vendor/contractor by name or reference. Future LOAs/LORs are

² Of the four responding firms, the Army found that only one firm demonstrated experience in all of the PWS tasks. COS at 3. QBE and the other two firms all lacked experience in at least one task. *Id.* The contracting officer states that after the deadline to respond to the sources sought notice closed, additional companies expressed an interest in the acquisition. COS at 10.

³ The Army had an executed LOA from Montenegro at that time, and stated that it anticipated receiving LOAs from Zambia and Iraq. *Id.*

expected to include the same vendor and to that end this IDIQ is being generated.” AR, Tab 11, International Agreement Competition Restriction (ICAR) at 1.

The Air Force then sent a solicitation to QBE. COS at 4-5; MOL at 2; AR, Tab 16, RFP. The solicitation stated that the Air Force anticipated the award of an IDIQ contract with a 5-year ordering period and a 7-year period of performance. RFP at 1. The solicitation contemplated a cost-plus-fixed-fee contract with fixed-price and labor-hour contract line items numbers for appropriate tasks. *Id.*

QBE submitted a proposal, and the Air Force and QBE engaged in negotiations that were completed on May 29, 2023.⁴ COS at 5. While the Air Force was preparing the contract award package, the Army asked the Air Force to place a hold on the contract award.⁵ *Id.* After additional review, on July 14, the Army asked the Air Force to cancel the solicitation because the solicitation did not accurately reflect its needs. COS at 6; AR, Tab 20, Cancellation Request.

In the cancellation request, the Army stated that the acquisition strategy did not accurately reflect its needs. AR, Tab 20, Cancellation Request at 1. Specifically, the Army needed the scope of the IDIQ contract to include the 30 or more countries within the Army’s portfolio of allied countries, but it did not have LOAs or other sole-source documentation from these other countries to support a directed award to QBE. *Id.*; see *also* COS at 6. This meant that the directed source justification--which was limited to three countries--did not match the greater scope of the Army’s actual need to provide support for all of the countries in the Army’s portfolio.⁶ Additionally, the Army determined that a revised solicitation would present the possibility of increased competition.⁷ AR, Tab 20, Cancellation Request at 1.

⁴ The parties agreed that the ceiling price of the IDIQ contract would be \$87 million, and the first two task orders would be issued in the amounts of \$9,190,912 and \$2,240,316 on a firm-fixed-price basis. COS at 5.

⁵ On June 9, 2023, QBE filed a protest with our Office, alleging that the Air Force improperly canceled the solicitation. The Air Force filed a request for dismissal, arguing that the protest was premature because no final decision had been made, and QBE withdrew its protest on June 22.

⁶ The Army also noted that the inclusion of one of three countries was premature because, at the time of the cancellation, the Army did not have an LOA for QBE to support that country. AR, Tab 20, Cancellation Request at 1.

⁷ In the cancellation request, the Army also noted that the solicitation did not meet its needs because the 5-year ordering period and 7-year period of performance were excessive, and the cost-plus-fixed-fee structure, when combined with the ordering period, might expose the Army to an unreasonable amount of risk. AR, Tab 20, Cancellation Request at 1.

On July 24, 2023, the Air Force notified QBE that it was going to cancel the solicitation.⁸ Protest at 2. QBE filed this protest with our Office on July 28.

DISCUSSION

QBE challenges the Air Force's cancellation of the solicitation. The protester argues that the Air Force impermissibly canceled the solicitation without providing any rationale for its decision. For the reasons stated below, we find the agency's cancellation decision to be reasonable. While we do not address every argument raised by the protester, we have reviewed each argument and find no basis to sustain the protest.

In a negotiated procurement such as this one, a contracting agency has broad discretion in deciding whether to cancel a solicitation and need only have a reasonable basis for doing so. *Abt Assocs., Inc.*, B-421517, B-421517.2, June 13, 2023, 2023 CPD ¶ 156 at 5.

A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. *Id.* 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. *Harmonia Holdings Grp., LLC*, B-417475.5, B-417475.6, Jan. 2, 2020, 2020 CPD ¶ 18 at 3. Where the record reflects that there was a reasonable basis to cancel the solicitation, we will not find that the agency abused its discretion, even though it could have taken a different course of action by amending the solicitation. See *Skyline ULTD, Inc.*, B-408961, Dec. 27, 2013, 2013 CPD ¶ 298 at 2.

The rationale for the cancellation is set forth in the Army's cancellation request, as well as the contracting officer's statement. AR, Tab 20, Cancellation Request; COS at 7-10. The Air Force states that the primary reason for canceling the solicitation was that it did not accurately reflect the Army's needs. The contracting officer represents that when the Air Force prepared the solicitation, it was operating under the understanding that the Army intended the IDIQ contract to cover the three countries that had requested support from QBE, plus any additional countries that requested support from QBE in the future. COS at 8. However, the Air Force subsequently learned that the Army needed a contract to provide support to more than 30 countries, the majority of which had not requested support from the protester. *Id.*; MOL at 3-4. The contracting officer explains: "As [the Army] reviewed the contract documents prior to the anticipated award to QBE, it became clear that the [] solicitation and resulting contract would not meet [the Army's] vast programmatic needs but, instead, catered solely to specific and limited country needs and was entirely dependent on receipt of LOAs." COS at 8.

QBE does not meaningfully rebut the Air Force's position that the solicitation will not meet the Army's need to support more than 30 allied countries. Instead, the protester

⁸ Subsequently, in a letter dated August 3, 2023, the agency notified QBE that the solicitation had been canceled. COS at 7.

contends that, from the outset, the acquisition was intended to support the Army's entire portfolio of allied countries. Comments at 6. However, the protester does not dispute that the majority of the countries within the Army's portfolio have not provided LOAs requesting support from QBE--or that such official written direction is required to direct award under the FMS program's exemption to competition.⁹

We find the Air Force's rationale for canceling the solicitation to be reasonable. Our Office has consistently stated that an agency may cancel a solicitation when the agency determines that the solicitation does not accurately reflect its needs. *Abt Assocs., supra; Harmonia Holdings, supra*. To direct an award to a contractor for a given country under the FMS program, there must be an official written direction requesting support from the firm. 10 U.S.C. § 3204(e)(4)(E); DFARS 206.302-4; FAR 6.302-4(b)(1). The absence of LOAs requesting support from QBE from the other countries within the Army's portfolio of allied countries meant that those countries would not be covered by the contract resulting from the solicitation, and the contract would not meet the Army's needs. MOL at 4; see also COS at 8. QBE has not demonstrated that the Air Force's determination that the solicitation did not meet the Army's needs was unreasonable.

In addition, we find that the Air Force reasonably concluded that issuing a revised solicitation on a competitive basis would increase the level of competition. Based on the contracting officer's review of the responses to the source sought notice, the Air Force found there was "an appetite in the industry to provide this type of support to the Government." COS at 10. The contracting officer also found that additional companies may be capable of meeting the requirements through teaming arrangements. *Id.* While the protester argues that QBE is the only qualified offeror for the requirement (Comments at 7), the protester's position is contradicted by the record, as the Air Force found that there was at least one potential offeror with experience performing all of the PWS tasks.¹⁰ COS at 3, 10. The protester has not demonstrated that the contracting officer's conclusion that competition could be enhanced is unreasonable.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁹ The protester complains that because there are two LOAs requesting support from QBE, "Pursuing a competitive offering would put the Government in the awkward position of requiring QBE to be on every team bidding in order to remain compliant with the LOAs." Comments at 6. QBE's disagreement with the Air Force's potential future acquisition strategy does not provide a basis to sustain this protest.

¹⁰ We also note that the protester's position that it is the only qualified vendor is contradicted by the Air Force's finding that QBE did not demonstrate experience in all PWS tasks. COS at 3.