



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Tender Loving Care Ambulance & Ambulette Co., Inc.

File: B-276571.2

Date: July 17, 1997

Zulima V. Farber, Esq., Lowenstein, Sandler, Kohl, Fisher & Boylan, for the protester.

Maria D. Esparraguera, Esq., and Craig E. Hodge, Esq., Department of the Army, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency's decision to cancel solicitation in a negotiated procurement was unreasonable is denied where the record shows that the solicitation's stated estimates, upon which pricing was based, were significantly overstated, and the solicitation failed to include certain material provisions.

DECISION

Tender Loving Care Ambulance & Ambulette Co., Inc. (TLC) protests as unreasonable the cancellation of request for proposals (RFP) No. DAAB08-96-R-0021, issued by the Department of the Army to obtain emergency medical technician services and transport for Fort Monmouth, New Jersey.

We deny the protest.

This small business set-aside solicitation anticipated the award of a fixed-price, indefinite delivery, indefinite quantity contract for these services. Offerors' pricing was to be based upon the solicitation's estimated number of "runs" to be made to various medical facilities over each of 3 years; the RFP estimated the annual number of runs at 660.

TLC, the incumbent contractor, and Monmouth-Ocean Hospital Services Corporation (MONOC), were the only two firms submitting proposals. The Army evaluated these proposals, conducted two rounds of discussions, and evaluated two sets of best and final offers (BAFO). MONOC was awarded the contract on February 26, 1997, as the offeror whose proposal was most advantageous to the government. In addition to its superior past performance rating, MONOC's price was lower than TLC's.

TLC filed a protest in this Office arguing that MONOC was not a small business, that the solicitation's estimated number of runs was significantly overstated, and that the Army improperly evaluated its proposal with respect to past performance. Our Office dismissed the first two bases of protest as beyond our jurisdiction and as untimely, respectively. On April 23, TLC withdrew the remainder of its protest after the Small Business Administration determined that MONOC was not a small business. Two weeks later, the Army advised TLC of its intention to cancel the solicitation and to issue a revised competitive solicitation. This protest followed.

A procuring agency may reject all proposals (even if technically acceptable) received in response to a solicitation if cancellation is clearly in the government's best interest. Federal Acquisition Regulation (FAR) § 15.608(b)(4); Labatt Food Serv., Inc., B-259900, May 3, 1995, 95-1 CPD ¶ 229 at 3. In a negotiated procurement such as this one, the contracting agency has broad discretion in deciding whether to cancel a solicitation and need only establish a reasonable basis for doing so. See JRW Management Co., Inc., B-260396.2, June 16, 1995, 95-1 CPD ¶ 276 at 6-7. Our review of each of the three bases for the Army's decision to cancel this solicitation shows that any one of them, standing alone, reasonably supports its decision. For the sake of brevity, we will discuss only two of the bases for the cancellation.¹

First, the Army concurs with TLC's prior (but untimely) allegation that the solicitation's estimates are significantly overstated. Projections based upon current usage show that 330 runs annually is the most reasonable estimate, half that set forth in the solicitation. A solicitation for an indefinite quantity of goods or services must contain estimates based on the best information available and must present a reasonably accurate representation of the agency's anticipated actual needs. Lederle-Praxis Biologicals Div., American Cyanamid Corp., B-257104 et al., Aug. 22, 1994, 94-2 CPD ¶ 205 at 5.

TLC does not dispute the reasonableness of the Army's present estimates, but complains that it is unfair to deprive TLC of award under the canceled solicitation when it was TLC itself who pointed out the flaw in the estimates. This contention provides no basis to object to the agency's decision to cancel. There is no justification apparent from the record here for the agency in effect to negotiate a sole source contract with TLC simply because that firm raised a solicitation impropriety. On the contrary, the agency clearly failed to comply with the requirement to set forth reasonably accurate estimates and, since a resolicitation with accurate estimates may result in cost savings to the government, this basis for

¹The Army's third basis for cancellation is its conclusion that award to TLC would violate the rule that purchases must be made at fair and reasonable prices. See FAR § 15.802(a).

canceling the solicitation is reasonable. See G.K.S. Inc., 68 Comp. Gen. 589, 591 (1989), 89-2 CPD ¶ 117 at 3 (a reasonable basis to cancel exists when a new solicitation presents the potential for increased competition or cost savings).

Second, the Army points out that the solicitation improperly failed to include the mandatory "Indefinite Quantity" clause at FAR § 52.216-22, as well as any indication of the minimum quantity to be ordered. FAR § 16.504(a)(4)(ii) requires indefinite quantity solicitations to specify the total minimum quantity or dollar value of supplies or services to be acquired under the contract. An indefinite quantity contract is enforceable and, thus, binding on the parties only if the buyer agrees to purchase from the seller at least a guaranteed minimum quantity of goods and services. Sunbelt Properties, Inc., B-249307, Oct. 30, 1992, 92-2 CPD ¶ 309 at 3. Moreover, since such minimum guarantees affect the contract's level of risk, they generally have a significant effect on offerors' prices. See Park Sys. Maintenance, Inc., B-252453.4, B-253373.3, Nov. 4, 1993, 93-2 CPD ¶ 265 at 3. Contrary to TLC's argument, these provisions cannot simply be added to the contract at a later date, given their material impact on the competition and the parties' legal obligations.

In sum, given the flaw in the estimates and the omission of the material FAR clauses, we conclude that the agency had a reasonable basis to cancel the RFP.

The protest is denied.

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