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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: Deva & Associates PC

File: B-309972.3

Date: April 29, 2008

Leigh T. Hansson, Esq., Gregory S. Jacobs, Esq., and Steven D. Tibbets, Esq., Reed Smith LLP, for the protester.

Jeffrey C. Morhardt, Esq., and Antoiner White, Esq., Department of Education, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency decision to cancel request for quotations (RFQ) and recompetete for accounting services was reasonable where agency's original (small business set-aside) requirement for financial statement preparation decreased and (unrestricted) requirement for credit reform reporting services significantly increased, and agency intended to combine all services under single task order, set aside for small businesses.

DECISION

Deva & Associates PC protests the Department of Education's cancellation of request for quotations (RFQ) No. ED-06-Q-0008, for financial advisory services. Deva asserts that the agency lacked a reasonable basis to cancel the RFQ and issue a new solicitation.

We deny the protest.

As originally issued, the RFQ sought quotations from vendors holding contracts under General Services Administration (GSA) Federal Supply Schedule (FSS) 520-7. It contemplated the issuance--on a time and materials basis--of three task orders (TO). TO No. 1 was set aside for small businesses and concerned financial statement preparation, analysis, reconciliation services, and other projects including Office of the Chief Financial Officer (OCFO) Procedures that Work preparation, and budget service support. RFQ app. 1, at 1-2. TO No. 2 concerned improving the agency's capacity to analyze financial data relating to student loan programs as they relate to credit reform. TO No. 3 concerned documenting internal control over financial

reporting in management statements in accordance with Office of Management and Budget Circular A-123. Id. at 7.

Quotations were to be evaluated under five factors—technical/management solution, performance metrics, small business strategy, past performance, and price. Under the technical/management factor, a vendor’s proposed approach for each TO was to demonstrate its ability to perform the tasks as evidenced by past performance. Separate subfactors were included for each TO and were applied depending upon the TOs quoted. Price was to be evaluated on the basis of the proposed labor mix and total price for all options and transition periods. Non-price factors, combined, were of significantly greater importance than price. Task orders were to be issued made on a “best value” basis.

Deva submitted a quotation only for TO No. 1 and it was one of three included in the competitive range. After discussions and the evaluation of revised quotations, the contracting officer, as source selection authority, concluded that Cotton & Company’s quotation, with its higher evaluation score and lowest estimated base-year pricing, was the best value. Deva protested the issuance of TO No. 1 to Cotton and the agency filed an administrative report. After Deva submitted comments and a supplemental protest, the agency decided to take corrective action in the form of reevaluating the TO No. 1 quotations. We dismissed the protest as academic (B-309972, Sept. 26, 2007).¹

From September into December 2007, the technical evaluation panel met and reevaluated the three competitive range quotations. As part of this process, the agency asked all three vendors whether they would be able to perform TO No. 1 as proposed if the agency’s resources were reduced below an earlier agency estimate of 25,500 labor hours. Deva requested clarification and, after the agency advised that any reductions were solely at the vendor’s discretion, submitted a revised quotation with a more competitive price than it initially submitted.

The agency subsequently decided to cancel the RFQ and resolicit its requirements. The agency based its determination on a variety of reasons including its finding that the original statement of work (SOW) was outdated and failed to emphasize its needs for credit reform reporting; its plan to merge the requirements of TO No. 1 with TO No. 2; and the fact that only Deva was left in the competition, since Cotton and the third vendor were no longer eligible small businesses. The agency later issued a bridge contract to Cotton to perform both TO Nos. 1 and 2 pending the resolicitation. Upon learning of the agency’s decision to cancel the RFQ, Deva filed this protest.

¹ The agency subsequently reimbursed Deva for attorneys’ fees and costs expended in bringing its original protest.

Deva asserts that the agency's decision to cancel the original RFQ lacks a reasonable basis. In the protester's view, the SOW encompassed the agency's requirements for credit reform work under both TOs, and there is no evidence of any significant change in the agency's requirements.

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ. Surgi-Textile, B-289370, Feb. 7, 2002, 2002 CPD ¶ 38 at 2. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs, or where there is a material increase in the services needed to satisfy the agency's requirements; in such cases, cancellation of the solicitation and issuance of a revised solicitation is appropriate. Logistics Solutions Group, Inc., B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 3

The agency's decision to cancel the RFQ was reasonable because the record shows that its requirements have changed. While the original SOW encompassed credit reform work, it was specifically described only under TO No. 2, and the RFQ provided for issuance of a task order for the credit reform work to a separate vendor. However, the agency states that it now recognizes that "it would be unacceptable for the Department to revert to the practice of using two different contractors . . . because of the possibility of increased time and cost involved in monitoring the activities of each contractor to ensure the smooth exchange of information and cooperation between the two contractors." Financial Management Operations (FMO) Director Declaration 3, ¶ 10.

In addition to combining its requirements under a single task order, the agency explains that its quantity requirements for financial statement and credit reform tasks have materially changed since it first issued the RFQ. In this regard, under the original TO No. 1, the agency estimated a need for 25,500 hours to perform financial statement preparation, analysis, and reconciliation services, and only 1,000 hours for credit reform work under TO No. 2, a total of 26,500 hours. Under its planned resolicitation, the agency anticipates a combined total of only [deleted] to [deleted] hours for both sets of tasks in each of 4 years, with credit reform making up an increasing percentage of the work. For example, under the original RFQ, credit reform work represented less than 4 percent of the total estimated hours under TO Nos. 1 and 2. Under the resolicited TO, the agency estimates that [deleted] hours ([deleted] percent of the total) will be devoted to credit reform tasks in the first year, rising to [deleted] hours ([deleted] percent of the total) in the third and fourth years.²

² Deva asserts that, since 2,000 hours of credit reform--OCFO management support--work under the resolicitation fall within the scope of the original TO No. 1, they should not be relied upon by the agency to justify cancellation. First Supplemental Comments at 5. In our view, even if these hours were not considered, the increase in other credit reform work remains a material change. For example, considering only
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In our view, the significant increase in credit reform work and decrease in financial statement work represent material changes in the agency's requirements and form a reasonable basis for canceling the original RFQ.

Deva asserts that credit reform work is within the scope of TO No.1 and that the agency should simply negotiate its "minor modifications" with the firm. Specifically, it notes that TO No. 1 includes assistance with correcting reportable conditions identified in independent financial statements, that credit reform reporting has been a reportable condition for the agency since 2003, and that the bridge contractor has performed credit reform work, identified as OCFO management support, under TO No. 1. Initial Comments at 4; First Supplemental Comments at 5. We disagree. The credit reform reporting tasks under the original TO No. 2 encompass tasks not covered by TO No. 1, including assisting the agency in improving the analytical tools used in the loan estimation process; ensuring that the tools reconciled with one another; assisting in the documentation of programs written to develop assumptions for the Student Loan Model; assisting in the development of detailed operating procedures for the loan estimation process; and assisting in efforts to more fully implement cohort reporting. RFQ app. 1, at 6. Further, the agency states that the new solicitation will include a new requirement to develop periodic informational reports that capture key highlights of the student loan programs. FMO Director Declaration 1, ¶ 11. While Deva notes that its revised quotation refers to its personnel's "extensive knowledge" and being "well qualified" to assist, implement, and comply with provisions of federal financial management legislation including the Credit Reform Act of 1990, its quotation for TO No. 1, as revised, does not otherwise address the credit reform requirements of TO No. 2.³ In any case, while Deva asserts that the agency should negotiate with it as the sole, remaining vendor under TO No. 1, it ignores the agency's legitimate plan to seek competition among small business vendors. See VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6 (agency's decision to cancel and resolicit is reasonable where it presents the potential for increased competition). Here, the agency has identified some 21 local small business FSS vendors, including Deva, who could be solicited.

In our view, since the agency's new SOW will include performance of credit reform tasks not included in Deva's quotation and, as discussed above, will include

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[deleted] of the [deleted] hours of credit reform work in year 1 represents [deleted] percent of the new total requirement as compared with the less than 4 percent that work represented under the original RFQ.

³ In this regard, the agency requires that any vendor performing the new requirement be "sufficiently knowledgeable in credit reform accounting so that the Department can maintain continuity [] for credit reform improvements." FMO Director Declaration 3, ¶ 10.

significantly more hours devoted to those tasks, the agency's changes represent more than "minor modifications," and thus justify cancellation of the initial RFQ.

Our conclusion is not changed by Deva's assertion that the agency's proffered rationales for cancellation are merely a pretext to avoid awarding a task order to Deva in connection with the agency's promised corrective action of reevaluating quotations. Government officials are presumed to act in good faith and, where a protester contends that contracting officials are motivated by bad faith, it must provide convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference and supposition. Logistics Solutions Group, Inc., *supra*, at 4; American Artisan Prods., Inc., B-292559, B-292559.2, Oct. 7, 2003, 2003 CPD ¶ 176 at 9.

Here, there is no evidence of pretext. For example, Deva asserts that the agency knew or should have known of all its bases for canceling the RFQ well before deciding to do so, including its needs for credit reform reporting, concerns over when a new vendor is introduced during the audit cycle, the comprehensiveness of the original SOW, and cost estimate issues. Initial Comments at 17-18. Apart from its suspicions regarding the timing of the decision to cancel and resolicit, Deva provides no evidence of pretext and the timing of the decision alone is insufficient. Where, as here, a reasonable basis exists to cancel a solicitation, an agency may cancel the solicitation regardless of when the information first surfaces or should have been known, even if the solicitation is not canceled until after proposals have been submitted and evaluated, or even if discovered during the course of a protest. See Rice Servs., Inc.; Watson Servs., Inc., B-293861 *et al.*, June 15, 2004, 2004 CPD ¶ 167 at 4; Global Solutions Network, Inc., B-289342.4, Mar. 26, 2002, 2002 CPD ¶ 64 at 3.

The protest is denied.

Gary L. Kepplinger
General Counsel