

July 13, 1995

P.S. Protest No. 95-15

RADIX II

Solicitation No. 102590-94-A-0024

DIGEST

Protest against cancellation of a solicitation for telephone information system is denied; contracting officer's decision to incorporate requirement in new solicitation for corporate-wide call management system is not arbitrary or capricious.

DECISION

Radix II (Radix) protests the cancellation of solicitation 102590-94-A-0024 for a "national multi-functional telephone information system" known as Postal Answer Line (PAL). According to the solicitation, the Postal Service currently has first-generation PAL systems installed at 80 postal facilities which allows postal customers to access pre-recorded discussions on particular postal-related topics. The solicitation sought second-generation equipment to cover those locations and possible additional locations.

The solicitation was issued on February 4, 1994. Proposals were received on May 23, 1994. Best and final offers were requested on August 18, 1994, and were due August 30. In January, 1995, apparently in response to a Postal Service request, Radix extended its best and final offer to April 30, 1995. By letter dated May 3, the offerors were advised that

the solicitation was cancelled "[i]n accordance with . . . Procurement Manual [PM] 4.1.2 j."¹
The letter explained the reason for the cancellation as follows:

The Postal Service is currently reviewing all of its call management systems (800 Complaint Line, Call Centers, Business Centers, Postal Answer Line, Call Forwarding, and internal use of [interactive voice response] to convey information to its employees). Currently, the Postal Service is developing the requirements for a corporate-wide call management solution. It is estimated that such a system would handle over 100 million calls per year and include many other features which the Postal Answer Line specifications did not include. Due to the magnitude of the change that would be required to amend Postal Answer Line specifications, it was determined it would be in the best interest of the Postal Service and potential offerors to issue a new solicitation.

Radix II's protest, dated May 17 and received May 18, contends that the bundling of the PAL requirement into a much larger procurement does not constitute a valid reason to cancel the procurement, and that such a bundling will make small businesses unable to participate in the reprocurement. Radix contends that the review referenced in the letter should have been conducted before the PAL solicitation was issued, since conducting it after proposals had been submitted and proposal costs incurred "penalized the smaller participants"

Radix contends that the Postal Service used the procurement process to obtain "detailed technical designs" from the offerors, in order to support its planning for its overall communications requirements, when other mechanisms would have been appropriate. It requests that the cancellation be overturned or that it be reimbursed its proposal preparation costs; it also appears to request, in the alternative, that the PAL portion of the larger procurement be separated from the larger procurement so that smaller firms may participate in it.

This office acknowledged receipt of Radix's protest by letter dated May 19. That letter suggested the possible untimeliness of the protest. Noting that the protest recited that offers had expired on April 30, we suggested, under the rule established in *GTEL GTE*, P.S. Protest No. 92-60, September 28, 1992, that that date marked the effective date of the cancellation of the solicitation, and that PM 4.5.7 d. required that any timely protest be received within ten working days of April 30.

¹ The section reads as follows:

Cancellation of Solicitations. Solicitations may not be cancelled unless circumstances make cancellation essential, such as when there is no longer a requirement for the supplies or services, or the solicitation requires amendments of such magnitude that a new solicitation is needed. Written notice of the cancellation must explain the reason for cancellation, and must be sent to all prospective offerors that received the solicitation. If the solicitation is cancelled before the date for receipt of proposals, any proposals received must be returned unopened to the offerors.

Replying to that suggestion, Radix distinguishes the circumstances in *GTEL GTE* from those here by noting that GTE GTE's protest was filed more than two months after offers expired, a time much longer than the additional time taken here. Further, Radix contends that it was entitled to wait for official notice of the cancellation from the contracting officer since previously he had reinstated lapsed offers belatedly. (The August 29 best and final offers expired by their terms in October, sixty days after they were submitted, although the contracting officer did not seek their extension until the following January.) In any event, Radix contends that it is protesting the May cancellation of the solicitation, not the expiration of the offers. We conclude that the circumstances here are sufficiently distinguishable from those of *GTEL GTE* to find the protest timely. Cf. *Labatt Food Service, Inc.*, Comp. Gen. Dec. B-259900, May 3, 1995, 1995 WL 262563 (when all offers had expired, offeror whose offer had expired December 9 had standing to challenge solicitation cancellation on December 16, because if protest were sustained and solicitation reinstated, agency may waive the expiration of offers and award on basis of the proposals submitted).

The contracting officer's statement recites the history of the PAL solicitation, noting that he received a memorandum on April 28 from the Consumer Advocate's Office requesting that the solicitation be cancelled.² The statement asserts that the cancellation resulted from a "corporate initiative . . . to develop a centralized national approach for processing postal customer telephone transactions [through a] national customer service center via single 800 number access." Such a national center is forecast to receive more than 180 million calls per year, ten times the volume contemplated by the PAL II solicitation, and to include various other telephone services, including an "800 [number] Complaint Line, Call Centers, Business Centers, . . . and Call Forwarding," in addition to PAL, in "one seamless system which would be utilized by the general public and . . . Postal Service employees."

The contracting officer contends that the magnitude of the changes to the solicitation which would have been necessary to incorporate the new requirements warranted a new solicitation. He notes that the offerors on the PAL II solicitation will receive the new solicitation.³

Responding to specific elements of Radix's protest, the contracting officer justifies the inclusion of the PAL requirement in the larger solicitation, explaining that PAL is the Postal

² The Consumer Advocate's Office was the requirements organization responsible for the operation of the PAL system. Curiously, the file submitted with the contracting officer's statement contains no memorandum from that office, although it does include an April 28 memorandum from the Deputy Postmaster General to the Vice President, Purchasing, which requests the cancellation of the solicitation because "the executive committee of the Corporate Call Management Task Force . . . has decided to incorporate the PAL II requirements in a new solicitation"

³ The Comptroller General dismisses protests against the cancellation of negotiated procurements raised by offerors which were not in line to receive the award had the solicitation not been cancelled, since such an offeror "does not have the direct economic interest necessary to qualify . . . to protest the cancellation." *System Software Standards, Ltd.*, Comp. Gen. Dec. B-249505, August 13, 1992, 92-2 CPD 106. The contracting officer's statement does not identify the standing of Radix II in the procurement when it was cancelled, nor the standing of any of the other offerors which participated in the protest as interested parties. Accordingly, we lack any basis on which to evaluate Radix's standing here.

Service's primary tool for providing customer assistance, and that integrating PAL into the call management strategy can provide information to the operators who will deal with those calls which PAL cannot accommodate, thus lowering the overall cost of responding to the calls. The contracting officer explains that as the result of restructuring, new high-level executives reviewed the Postal Service's call management strategy; according to the contracting officer, this review occurred in November, 1994, after the PAL II requirement was formulated and solicited. The contracting officer notes that this review occurred within the Marketing Department, not the Consumer Advocate's Office, and that the individuals involved did not read the PAL II offers.

Finally, the contracting officer notes, correctly, that previous decisions of this office have established that proposal preparation costs are not a remedy available in this forum.

Replying to the contracting officer's statement, the protester refines its approach to the protest as follows:

-- Although the additions cited by the contracting officer "state a sound case for new requirements," that is not the issue; the issue is that the Postal Service was negligent and careless in structuring the original procurement. The Postal Service should have foreseen enhancements to the system which the contracting officer now describes as "natural and obvious."

-- At the very least, the Postal Service should have cancelled the requirement sooner; the delay between November, 1994, and June, 1995, continued "the unnecessary investment of private firms . . . in a futile procurement that never should have been issued or continued. . . ."

-- It is irrelevant that the change resulted, as the contracting officer contends, from a revised management approach; the Postal Service should remain liable for the harm done to the participants in the solicitation.

-- The availability of the new solicitation to the PAL II participants fails to provide a meaningful remedy, particularly for small firms such as Radix, which may not be able to compete for the new requirement and which have lost their investment in the previous one.

-- The Postal Service must have the authority to settle the claims of firms which it has damaged.

Pacific Bell, an interested party, has commented on the contracting officer's statement, focussing on a different point than that raised by the protester. Pacific Bell asserts, citing various portions of the pre-proposal conference transcript, that "the PAL solicitation ... did not need to be amended at all to integrate it into the seamless call center system" now envisioned by the contracting officer. According to Pacific Bell, existing requirements of the PAL statement of work "replicate those which would be necessary in order to integrate PAL into and interface it with a system which would include the [Postal] Service's 800 Complaint Line, Business Centers, Call Centers, and Call Forwarding."

Further, Pacific Bell contends that the anticipated increase in call volumes identified by the contracting officer does not require that the solicitation be cancelled, since "[t]he ability to handle specific volumes of calls is independent of the functional capability the solicitation required. . . . [O]nce the platform is established, increased capacity . . . is a straightforward matter of growing or shrinking the size of the system"

MS Technologies Corporation, another interested party, submitted brief comments supporting the contentions of the protester, and Unisys, a third interested party, submitted comments noting that it had filed a claim for proposal costs with the contracting officer under the Contract Disputes Act.

DISCUSSION

As noted at footnote 1, *supra*, PM 4.1.2 j. provides that "[s]olicitations [using the negotiated procedure established by PM 4.1] may not be cancelled unless circumstances make cancellation essential, such as when there is no longer a requirement for the supplies or services, or the solicitation requires amendments of such magnitude that a new solicitation is needed."

A previous decision of this office, *Barretti Carting Corporation*, P.S. Protest No. 92-92, December 23, 1992, explained why the standard for the cancellation of a negotiated procurement differs from that for the cancellation of a formally advertised procurement after bids are opened:

Because offers in negotiated procurement[s] are not publicly opened (and the procurement regulations preclude the disclosure of their contents, see PM 4.1.2 k.3.), offerors are not put at risk of having the information in their offers revealed to other prospective contractors. At the same time, because the offers may be the subject of revision in the course of discussions, offerors may not properly assume that an offer which was initially the most favorable may not be displaced by another's offer which is improved in the course of discussions.^[1]

^[1] The distinction is reflected in the different standards applicable to the cancellation of formally advertised procurements ("invitations for bids" or IFBs) and negotiated procurements. Compare PM 12.7.7 e.1. ("compelling reason" necessary to cancel advertised solicitation after bids are exposed) with 12.7.3. f. (advertised solicitation may be canceled before bids received "in the interest of the Postal Service") and 4.1.2 j. (negotiated solicitation may be canceled before or after proposals received if "circumstances make cancellation essential").

In government procurements conducted pursuant to the Federal Acquisition Regulation, the standard for cancellation of a negotiated procurement is "a reasonable basis," rather than the "cogent and compelling reason" required for cancellation of an IFB. The Comptroller General has explained that the reason for the difference

is that "bids in response to an IFB are publicly exposed, and to reject them and seek new bids would discourage competition." *HBD Industries, Inc.*, Comp. Gen. Dec. B-242010.2, April 23, 1991, 91-1 CPD 400.

In any event,

[w]hen we review a contracting officer's decision to cancel a solicitation and resolicit, we will overturn that decision only if it is arbitrary, capricious or not supported by substantial evidence.

Id.

We conclude that the contracting officer's decision is adequately supported by the record. The protester's comments responding to the contracting officer's statement appear to accept the contracting officer's rationale, while continuing to object to its timing. The protester's complaints about the timing of the cancellation are unavailing. "[A]n agency may properly cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known, even if the solicitation is not cancelled until after proposals have been submitted and evaluated and protesters have incurred costs in pursuing the award" *Peterson-Nunez Joint Venture*, Comp. Gen. Dec. B-258788, February 13, 1995, 95-1 CPD 73.

Pacific Bell's contention that any offer responsive to the PAL solicitation should be compatible with the Postal Service's new requirements is not sufficient to overcome the contracting officer's determination that the PAL requirement should be incorporated into the new solicitation. It was not arbitrary or capricious to determine that the requirement should be restated in a comprehensive solicitation even though it might be possible to meet the Postal Service's needs by incorporating the PAL II requirement in a piecemeal fashion. The contracting officer has adequately supported the conclusion that incorporating the requirement will be beneficial to the Postal Service.

The protest is denied.

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