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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Platinum Services Inc.

File: B-402718.2; B-402923

Date: August 27, 2010

John E. Jensen, Esq., and Nicole Y. Beeler, Esq., Pillsbury Winthrop Shaw Pittman, for the protester.

Lt. Col. Dana J. Chase, and Scott N. Flesch, Esq., Department of the Army, for the agency.

Jacqueline Maeder, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's decision to terminate contracts and cancel underlying solicitations was reasonable where it determined that solicitations did not set forth reasonably accurate estimates, which are essential for offerors to prepare reasonable, intelligent offers.

DECISION

Platinum Services, Inc., of Parry Hall, Maryland, protests the termination of its contracts and the cancellation of request for proposals (RFP) Nos. W91QV1-10-R-0003 (RFP R-0003) and W91QV1-10-R-0005 (RFP R-0005), issued by the Department of the Army for inbound, outbound, and local shipment and/or storage of household and other goods for Army personnel.

We deny the protest.

On or about December 10, 2009, the Army issued multiple solicitations, including the RFP's here, for inbound, outbound, and local shipment of household and other goods for service members in the Washington, D.C. area.¹ Agency Report (AR) at 2. The solicitations contemplated the award of fixed-price requirements contracts for a

¹ Solicitations R-0003 and R-0005 and the amendments issued to these solicitations are essentially identical. Subsequent citations will generally refer to only RFP R-0003.

10-month base period, with four 1-year options. RFP R-0003 at M.1. Award was to be made to the lowest-priced, technically-acceptable offeror. Id. at M-3.

The solicitations included an ordering limitations clause, which contained three columns: the estimated maximum daily requirements, the minimum acceptable daily capabilities, and the offeror's guaranteed daily capability. Id. at 37. The government's estimated maximum daily requirements and minimum acceptable daily capabilities were broken into estimated gross hundred weight (GCWT) (one hundred weight is equal to 100 pounds) for baggage and net hundred weight (NCWT) for household goods. The agency intended that offerors use the information in the chart to determine their ability to meet the agency's minimum and maximum requirements. AR at 2. The RFPs listed 100 GCWT (10,000 pounds) for baggage and 300 NCWT (30,000 pounds) for household goods as the minimum acceptable daily capability. In contrast, the estimated maximum daily requirement was listed as 150 GCWT (15,000 pounds) for baggage and 400 NCWT (40,000 pounds) for household goods. RFP R-0003, appendix 7, Performance Summary, at 37.

The agency issued a series of amendments in an attempt to clarify the solicitation and to respond to questions from potential offerors. The initial questions caused the agency to examine the estimates included in the solicitations, which had been used for the previous 20 years. AR, Contracting Officer (CO) Supplemental Statement, Aug. 24, 2010, at 1. After concluding that the solicitation estimates were incorrect, the agency issued amendment 2, which included a single daily usage estimate expressed in 1,000 (k) pound units to try to correct the estimates.

After receiving questions about its revised estimates, the agency concluded that amendment 2 not only introduced a new term (thousand pound multiplier "k") but also should have provided minimum and maximum weights. Id. at 2. In response, the agency issued amendment 5, which provided revised minimum requirements and maximum daily usage estimates, also stated in 1,000 pound (k) units. Specifically, the minimum acceptable daily capabilities were 100K (100,000 pounds) for unaccompanied baggage and 300K (300,000 pounds) for household goods; the maximum daily tonnage requirements were 150K (150,000 pounds) and 400K (400,000 pounds), respectively. RFP, amend. 5, at 1.

The agency awarded six contracts, including two to Platinum, on April 12. Just prior to the commencement of performance, however, one of the awardees advised the agency that it had misunderstood the maximum daily requirements specified in the solicitations and that it lacked the capacity to move and/or store the maximum quantities if required to do so. AR, CO Statement, at 3; CO Supplemental Statement, Aug. 23, 2010, at 2. In response, the agency again examined the estimates provided in amendment 5 and determined that the estimates were significantly overstated.

After receiving new input (later in April) regarding the agency's requirements, the agency revised its estimates a third time. Specifically, for the RFP R-0003 requirement, the minimum acceptable daily capabilities for baggage and household

goods were 200 NCWT (20,000 pounds) and 500 NCWT (50,000 pounds), respectively (versus 100,000 and 300,000 pounds under amendment 5), and the maximum daily requirements were 300 NCTW (30,000 pounds) and 1200 NCWT (120,000 pounds), respectively (versus 150,000 and 400,000 pounds under amendment 5). Likewise, for the RFP R-0005 requirement, the minimum acceptable daily capabilities for baggage and household goods were 200 NCWT (20,000 pounds) and 600 NCWT (60,000 pounds), respectively (versus 100,000 and 300,000 pounds under amendment 5), and the maximum daily requirements were 400 NCWT (40,000 pounds) and 1,000 NCWT (100,000 pounds), respectively (versus 150,000 and 400,000 pounds under amendment 5).

Given the new estimates of the agency's requirements and the misunderstanding of the contract requirements expressed by one of the awardees, the agency concluded that its use of inconsistent units of measurement may have confused offerors; that the minimum and maximum quantities were significantly overstated in amendment 5, which may have led to incorrect pricing; that the errors regarding the estimates may have negatively affected the field of competition; and that other awardees might also have problems performing in accordance with the contract requirements as properly understood. AR at 2-3; AR, CO Statement, at 3. The agency therefore decided to terminate the contracts and cancel the underlying solicitations. AR, CO Statement, at 3. Subsequently, the agency determined that the most recent estimates may continue to understate its needs, and that when the solicitation is reissued, the estimates will be significantly lower than the estimates provided in amendment 5. CO Supplemental Statement, Aug. 24, 2010, at 3. On August 24, the CO provided the "actual" minimum and maximum weights for the RFP R-0003 and RFP R-0005 requirements, which are significantly lower than the estimates provided in amendment 5. AR, CO Supplemental Statement, Aug. 24, 2010, at 3.

Platinum Services asserts that the cancellations here were unreasonable because there is no basis for concluding that the solicitations as amended (and the resulting contracts) did not accurately reflect the agency's needs, or otherwise confused offerors. We disagree.

A procuring agency has broad authority to cancel an RFP, and needs only a reasonable basis to do so. A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2. Such a reasonable basis exists where a solicitation does not present a reasonably accurate representation of the agency's anticipated actual needs. Lederle-Praxis Biologicals Div., Am. Cyanamid Corp., B-257104 et al., Aug. 22, 1994, 94-2 CPD ¶ 205 at 5. Further, where a valid basis for cancellation exists, an agency properly may cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known. Daston Corp., B-292583, B-292583.2, Oct. 20, 2003, 2003 CPD ¶ 193 at 3.

It is clear from the record that the solicitations, even as amended, did not present a reasonably accurate representation of the agency's anticipated actual needs. In this regard, Platinum's assertion that the cancellations were improper because

amendment 5 corrected the original errors in the estimates ignores the fact that the agency received revised estimates in April 2010 showing that the amendment 5 estimates on which offers and the awards were based were substantially overstated. As reported by the contracting officer, amendment 5 “published estimated acceptable daily weight capabilities that were grossly overestimated.” AR, CO Statement at 3. Further, the determination that the amendment 5 estimates were materially overstated is supported not only by the April revised estimates, which were substantially lower than the amendment 5 estimates on which the awards were based, but also by the “actual” weights provided by the CO in her August 24 supplemental statement, which likewise are substantially lower than the amendment 5 estimates. AR, CO Supplemental Statement, Aug. 24, 2010, at 3.

Since the risks associated with a variance between actual and estimated purchase quantities are borne by the contractor, the government is obligated to use its best information in preparing quantity estimates so that offerors can appropriately assess and apportion risk and other contract performance costs into their prices. Where award is made on the basis of estimates that vary significantly from the agency’s actual requirements, the contractor is in the untenable position of performing contract work of a magnitude significantly different from the solicited work, posing a risk to both the contractor and the government that the contractor will be unable to perform as required. News Printing, Inc., B-274773.2, Feb. 11, 1997, 97-1 CPD ¶ 68 at 3. Here, we conclude that the significantly overstated estimates in amendment 5 provided a reasonable basis for cancellation.

Noting that the agency has determined that even the April 2010 estimates are flawed, Platinum questions whether the revised solicitations will have estimates better than those contained in amendment 5. This concern is premature since the agency has not yet issued a revised solicitation. Norfolk Shipbuilding and Drydock Corp., B-219988, B-219988.3, Dec. 16, 1985, 85-2 CPD ¶ 667 at 3.

The protest is denied.

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Acting General Counsel