

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

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Decision

Matter of: Inalab Consulting, Inc.; Solutions by Design II, LLC

File: B-413044; B-413044.2; B-413044.3

Date: August 4, 2016

Antonio R. Franco, Esq., Michelle E. Litteken, Esq., and Patrick T. Rothwell, Esq., Piliro Mazza PLLC, for Inalab Consulting, Inc.; and Patrick Norman, Esq., Patrick Norman Attorney At Law, for Solutions by Design II, LLC, the protesters. Gerard F. Doyle, Esq., and Ron R. Hutchinson, Esq., Doyle & Bachman LLP, for i360technologies, Inc., the intervenor. William B. Blake, Esq., Department of the Interior, for the agency. Stephanie B. Magnell, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's decision to cancel a solicitation is denied where the agency's decision to move the procurement in-house had a reasonable basis.
 2. Protest is dismissed where the agency's cancellation of the solicitation and decision to perform the requirement with government employees renders academic multiple organizational conflicts of interest.
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DECISION

Inalab Consulting, Inc., of Stafford, Virginia, protests the terms of request for quotations (RFQ) No. D16PS00382, which was issued by the Department of the Interior (DOI) to obtain software migration services between products of Oracle Corporation, on the basis that the agency failed to address organizational conflicts of interest. Inalab and Solutions by Design II, LLC (SBD), of Vienna, Virginia, also protest the agency's subsequent cancellation of the RFQ during the pendency of the protest, alleging that the cancellation was simply a pretext to avoid the resolution of its protest and, furthermore, lacked a reasonable basis.

We deny the protests in part and dismiss the protests in part.

BACKGROUND

As context for this solicitation, in 2006, Oracle announced that it planned to discontinue the software product Oracle Business Intelligence Discoverer (Oracle Discoverer). SBD Resp. to Second Req. for Dismissal, June 3, 2016, exh. B, Oracle Business Intelligence Discoverer Statement of Direction, March 2014, at 5. In March 2014, Oracle announced that it would end extended support for Oracle Discoverer in June 2017, although it intended to provide sustainment support indefinitely. Id. at 6.

Several years later, on April 7, 2016, DOI issued the RFQ via the General Services Administration (GSA) e-Buy system under solicitation No. 1080104, as a small business set-aside under Federal Acquisition Regulation (FAR) subpart 8.4, to current holders of the GSA's schedule 70 General Purpose Commercial Information Technology Equipment, Software, and Services contract. DOI Response to Inalab Opp'n to Second Req. for Dismissal, June 1, 2016, at 1. The RFQ was issued to obtain services in relation to the agency's planned migration from Oracle Discoverer to the Oracle Business Intelligence Enterprise Solution (OBIEE) software product. RFQ § 2.1. In this respect, the awardee would install Oracle Business Intelligence Application (OBIA) and use OBIA to convert the agency's [Oracle] Discoverer Reports into the OBIEE reporting format. Id. § 2.2.

In relation to this migration, the RFQ informed vendors that:

In FY2015, [an in-house] contractor¹ conducted an analysis of over 400 of [DOI's] Oracle Federal Financials (OFF) reports. The analysis consisted of identifying those reports that were run most frequently and most recently. The conclusion was that there were 72 reports considered high use, high value and global in nature. [This in-house] contractor believes the content of these 72 reports, hereafter referred to as "Global reports", will support 80 to 90% of the reporting requirements of [the agency's] customers

[DOI] desires to have a total of 120 reports developed in []OBIEE.
[DOI] will identify the remaining 48 of 120 reports, within 30 days of

¹ DOI first identified the in-house contractor as i360 technologies, Inc. (i360) during the pendency of this protest. Previously, i.e., "[i]n the solicitation and in the subsequent communications between the protester's counsel and the contracting officer, i360 was only identified as 'the contractor' or 'the in-house contractor.'" First Req. for Dismissal, at 1. The agency's prior refusal to identify i360 was due to the fact that "[t]he contracting officer erroneously believed she was prohibited from identifying the [in-house] contractor before the task order was awarded." Id.

contract award, basing the selection on the pool of reports that have been funded by customer agencies and are currently in Production

Id. § 2.1. Vendors were further instructed to “[l]everage [the] previous analysis by [the agency]² to create the 72 Global reports utilizing existing Discoverer SQL query statements.” Id. § 2.4.4. The analysis created by i360 was not made available to other potential vendors nor was i360 excluded from the competition.

The RFQ provided for issuance of a task order to the vendor that offered the best value to the agency, considering the factors of technical approach/capability, task order management, organizational experience, past performance, and price. Id. § 5.3.1 The four non-price factors were more important than price. Id. Quotations were due by April 27. RFQ, Mod. 1, Apr. 7, 2016, at 1.

On April 22, Inalab wrote to the contracting officer, explaining that i360’s potential participation in the procurement was problematic because i360 had access to non-public information, such as the level of effort required to convert the reports, and also had the opportunity describe the work in a manner beneficial to itself. Inalab Resp. to Second Req. for Dismissal, May 25, 2016, at 2. See also Protest, exh. B, Inalab Letter to DOI, Apr. 22, 2016. According to Inalab, the agency promised a response by April 26, 2016, but none was forthcoming. Id.

On April 27, Inalab filed a pre-award protest under section 21.2(a)(1) of our Bid Protest Regulations, alleging that the solicitation was tainted by organizational conflicts of interest (OCIs). Protest at 1. In this respect, the protester claimed that i360’s unique knowledge, derived from performance of the report analysis, had created an unequal access to information OCI. Protest at 7-11. Inalab also asserted that, in i360’s role as the in-house contractor, it had shaped the solicitation to offer itself a competitive advantage, creating a biased ground rules OCI. Id. See also Federal Acquisition Regulation (FAR) §§ 9.505-2(b), 9.505-4. The protester requested that we recommend that the agency either exclude i360 from participating in the competition or recommend that the agency publicly release i360’s business analysis. Protest at 11. The agency report was due by May 27.

On May 6, 2016, the agency requested that we dismiss the protest on the basis that Inalab was not an interested party under our Bid Protest Regulations because, during the pendency of the protest, the deadline for receipt of final quotations had passed without a submission from Inalab. First Req. for Dismissal, at 1-2, citing 4 CFR § 21.0(a). In this regard, the agency reasoned that “a protester does not have a sufficient direct economic interest to be an interested party when it does not

² Although this sentence identifies the analysis as the agency’s, the RFQ earlier states that the in-house contractor created the analysis. In this respect, the agency confirms that the analysis was contractor-created. First Req. for Dismissal at 3.

submit a quotation and the available remedy does not require the solicitation to be amended.” Id. at 3.

On May 17, we declined to grant the agency’s first request for dismissal. In accordance with CGI Fed. Inc. v. United States, 779 F.3d 1346 (Fed. Cir. 2015), we found that, regardless of whether the protester submitted a quotation, it had preserved its status as a prospective bidder, and thus an interested party, by timely filing its pre-award challenge. GAO Resp. to First Req. for Dismissal, May 17, 2016. This conclusion was also consistent with our own precedent. See Honeywell Tech. Sols., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 (to be timely, protester aware of facts giving rise to a potential OCI prior to the time set for submission of quotations was required to submit protest before that deadline); 4 C.F.R. § 21.2(a)(1).

On May 20, DOI again requested that we dismiss the protest, stating that it intended to take corrective action that would, in the agency’s view, render the protest academic. Second Req. for Dismissal, May 20, 2016, at 1. The agency planned to cancel the RFQ and procure identical services via an existing indefinite-delivery, indefinite-quantity (ID/IQ) contract with the challenged in-house contractor, i360. Id. at 2; see also id., exh. C, Contracting Officer Mem. for Record, May 20, 2016, ¶ 3. DOI explained that, “[w]hen the agency’s motion to dismiss was denied, the agency determined that its time limitation changed and it now had an urgency requirement” that justified cancellation of the RFQ and performance by i360. Second Req. for Dismissal, May 20, 2016, at 4. DOI explained that it “need[ed] to acquire these services expeditiously [sic] because Oracle will no longer support the Oracle Discover product after June 2017.” Id.

DOI cancelled the solicitation on May 23. DOI Email to GAO, July 21, 2016.

On May 25, Inalab responded, arguing that the agency’s decision to cancel the RFQ was merely a pretext to avoid review of the OCI challenge. Inalab Opp’n to Second Req. for Dismissal, May 25, 2016, at 2-4. The protester argued that the agency’s failure to engage in advance planning was not a sufficient basis to remove the procurement from competition, as the discontinuation of extended support for Oracle’s Discoverer product was well-known and long-anticipated. Id. at 4, citing SMF Sys. Tech., B-292419.3, Nov. 26, 2003, 2003 CPD ¶ 203. Inalab also protested the cancellation of the solicitation, claiming that it lacked any reasonable basis.³ Id., citing XTec, Inc., B-410778.3, Oct. 1, 2015, 2015 CPD ¶ 292.

On June 1, DOI filed a supplemental response, highlighting the upcoming lack of extended support for Oracle Discoverer and representing that, in its view, whether

³ The objection to the cancellation presented a new basis of protest and was separately docketed as B-413044.2.

an OCI existed could only be known after award, because the OCI was “contingent on whether i360 was awarded the contract.”⁴ DOI Response to Inalab Opp’n to Second Req. for Dismissal, June 1, 2016, at 4. As to urgency, DOI again explained that “[w]hen the agency’s [first] motion to dismiss was denied, the agency determined that its time limitation [had] changed and it now had an urgency requirement.” Id., see also id. at 9 (“The agency cannot be expected to predict that this solicitation would be subject of a pre-award protest.”).

Inalab responded that DOI’s proposed corrective action failed to render the protest academic because an effective sole-source award to i360 did not address the OCI allegations. Inalab Supp. Resp. to Agency Resp. to Inalab Opp’n to Second Req. for Dismissal, June 3, 2016, at 2. The protester also noted that, despite the alleged urgency, DOI had not elected to override the automatic stay or waive the OCI. Id. at 3. See also 31 U.S.C. § 3553(c); FAR § 9.503. In addition, Inalab noted that DOI had never evaluated the OCI, despite statements to the contrary, and furthermore, the delay was due to DOI’s own flawed legal conclusion that it could wait until after award to determine whether its procurement contained unequal access to information and biased ground rules OCIs. Inalab Supp. Resp. to Agency Resp. to Inalab Opp’n to Second Req. for Dismissal, June 3, 2016, at 4.

On June 7, we informed the parties that resolution of the agency’s second request for dismissal would be addressed as part of a final written decision on the protest merits and the deadline for the agency report remained June 10. GAO Email, June 7, 2016.

On June 8, DOI stated that it was finalizing the agency report (originally due on May 27) and asked the other parties for a response as to DOI’s intended request for a filing extension. DOI Email to Inalab, i360, and SBD, June 8, 2016, at 2:54 p.m.

On June 10, instead of submitting the agency report, the agency again requested that we dismiss the protest. Third Req. for Dismissal, June 10, 2016. First, it retracted its second request for dismissal in its entirety. Id. The agency proposed a different corrective action that, the agency alleged, would render the initial and supplemental protests academic. Third Req. for Dismissal, June 10, at 2016, at 1. The agency described its corrective action as follows:

In recent weeks, [DOI] discovered that a current [DOI] employee has substantial experience utilizing the OBIEE software and has further

⁴ On May 26, our Office granted the agency’s request to respond to Inalab’s opposition to the agency’s second request. GAO Email, May 26, 2016, 9:04 a.m., at 1. We also granted the agency’s request to extend the due date for the agency report to June 10, with protester’s comments due by June 20. GAO Email, May 26, 2016, 12:55 p.m., at 1.

discovered that consulting-type services are available through already-purchased licenses. These discoveries, combined with other findings detailed in the Attachments to this Motion have led FMD [the DOI Financial Management Directorate] to conclude that these services can be performed in-house provided that one new federal employee is hired.

After concluding that the services can be performed in-house, FMD analyzed the benefit of performing the services using federal resources and has concluded that such an action would result in a significant cost savings to the government, allow for further development of in-house expertise and allow FMD to be more responsive to its clients.

Id. at 2. In this respect, the agency represented that (1) the RFQ had been and would remain cancelled; (2) no task order would be awarded to i360 under the existing ID/IQ contract; and (3) the government would perform the requirement in-house using government resources. Id. at 3. The agency expressly retracted its position as to the urgency of the tasks to be performed. Id.

On June 20, Inalab asserted that the agency's new proposed cancellation was, again a pretext that provided no reasonable basis for the cancellation. Inalab Opp'n to Third Req. for Dismissal, June 20, 2016, at 5.

DISCUSSION

Inalab contends that the agency's cancellation of the solicitation was not only a pretext to avoid external review of the OCI issues, but also lacks a reasonable basis. The protester also contends that the agency has failed to address the OCI issues inherent in this procurement. For the reasons below, the protest is denied in part and dismissed in part.⁵

⁵ In a related protest, SBD also challenged DOI's cancellation of the solicitation, which was docketed as B-413044.3. Subsequent to these filings, as above, the agency submitted a third request for dismissal on the basis that it was cancelling the solicitation and using government employees to perform the work. Third Req. for Dismissal, June 10, 2016. SBD's response was due by 5:30 p.m. on June 20. GAO Email to Parties, June 13, 2016, 11:18 am. On June 20, at 11:44 p.m., after the deadline had passed, SBD requested an enlargement of time until midnight to file the response, attaching its response. SBD Email to GAO, June 20, 11:55 p.m., at 1. Although the agency has not requested that we dismiss SBD's protest based on its failure to file a timely response, we do so under our own authority. 4 C.F.R. § 21.3(i). See also Aspen Consulting, LLC, B-405778.2, Mar. 19, 2012, 2012 CPD ¶ 117 at 1 (dismissing protest on the basis of late-filed comments where we did not
(continued...)

Cancellation of the Solicitation

Inalab challenges the agency's decision to cancel the procurement. The protester contends that the agency's rationale for cancelling the RFP is a pretext to avoid resolution of the protest. Inalab also alleges that the cancellation is unreasonable because DOI has failed to demonstrate that in-house performance would result in cost savings and efficiencies as compared with award under the solicitation. Based upon our review of the record, we find that the agency's cancellation was not unreasonable.

As a general rule, our Office does not review agency decisions to cancel procurements and instead perform the work in-house, since such decisions are a matter of executive branch policy. Mastery Learning Sys., B-258277.2, Jan. 27, 1995, 95-1 CPD ¶ 54 at 2. However, where, as here, a protester argues that the agency's rationale for cancellation is but a pretext--that the agency's actual motivation is to avoid awarding a contract on a competitive basis or to avoid resolving a protest--we will closely examine the reasonableness of the agency's actions in cancelling the procurement. SMF Sys. Tech. Corp., B-292419.3, Nov. 26, 2003, 2003 CPD ¶ 203; Griffin Servs. Inc., B-237268.2 et al., June 14, 1990, 90-1 CPD ¶ 558 at 3, recon. denied, General Servs. Admin.--Recon., B-237268.3 et al., Nov. 7, 1990, 90-2 CPD ¶ 369 at 2.

Here, the agency states that, during the pendency of the protest, it determined that it could perform the requirement with government employees. In this respect, the agency explained that:

On or around May 11, 2016, FMD learned that a current GS-14 level employee had significant recent OBIEE experience gained from his duties at his former place of employment [. . .].

On or around May 18, 2016,⁶ FMD learned that consulting-type services from Oracle are available under previously-purchased [. . .] software licenses. Through these available services, Oracle will

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grant an extension of the filing deadline); Bevilacqua Research Corp., B-293051, Jan. 12, 2004, 2004 CPD ¶ 15 at 11 n.11 (noting dismissal of supplemental protest where comments were not filed by deadline established by GAO attorney).

⁶ On May 20, the agency filed its second request for dismissal, stating that it intended to cancel the solicitation and procure the services through a noncompetitive award to i360. Second Req. for Dismissal, May 20, 2016. Although the agency does not address the timing of its proposed corrective action in light of the alleged discoveries of in-house capabilities on May 11 and May 18, we have no basis to question the agency's description of the order of events.

provide advice regarding the best use and configuration of the licensed software within the FMD environment at no additional cost.

Once the in-house expertise and existing support from Oracle was discovered, FMD began exploring the potential benefits to performing the required need exclusively with in-house resources.

On or about May 23, 2016, the Agency preliminarily determined that existing resources could, in fact, be leveraged by utilizing the aforementioned GS-14 level employee full time, an existing GS-13 level employee full time, an existing GS-14 level employee part time and an existing GS-15 level employee as needed. In addition to the existing employees, FMD plans to hire one GS-15 level employee.

The existing government staff has been valued at \$208,772 per year and the planned additional staff member is estimated to cost \$143,009 per year.

The government estimate for the initially planned contracted effort as \$821,066.22 which suggests that the government will save \$469,285.80 by performing the work in-house instead of obtaining contractor support.

* * * * *

Leveraging the services available under the previously purchased Oracle licenses also allows FMD to eliminate some degree of waste by fully utilizing an existing resource that has already been paid for.

Third Req. for Dismissal, attach. 1, Decl. of Procurement Division Chief, June 10, 2016, ¶¶ 4-11.

Inalab challenges the underlying basis of the agency's cancellation, asserting that DOI unreasonably concluded that in-house performance would result in a cost savings. Specifically, the protester questions "DOI's last minute discovery of the purported capability to accomplish the required work using [a]gency resources," asserting that "DOI has not shown that the cancellation would lead to cost savings, as it now claims, or that it will be able to accomplish the work." Inalab Resp. to Third Req. for Dismissal, June 20, 2016, at 3.

The record shows that, in response to the protest, the agency began an internal inquiry for an alternate method of accomplishing the work. That inquiry led to the conclusion that the agency could accomplish at least some of the work through "consulting type services from Oracle [that] are available under previously-purchased OBIEE software licenses." Third Req. for Dismissal, attach. 1, Decl. of Procurement Division Chief, June 10, 2016, ¶ 5.

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. Deva & Assocs. PC, B-309972.3, Apr. 29, 2008, 2008 CPD ¶ 89 at 3. Here, the agency has determined that at least some of the effort currently encompassed by the solicitation can be accomplished at no additional cost to the agency; this is sufficient for us to conclude that the agency's cancellation of the solicitation is reasonable.

In any event, to the extent the protester argues that the newly-discovered in-house capability constitutes a new basis for cancelling the solicitation that was not identified until after the solicitation had been cancelled, our Office has held that a new or additional rationale justifying the cancellation of a solicitation provided by an agency during the development of a protest is acceptable so long as it would have supported cancellation had it been advanced originally. See Peterson-Nunez Joint Venture, B-258788, Feb. 13, 1995, 95-1 CPD ¶ 73 at 5. In this regard, an agency may properly cancel a solicitation no matter when the information supporting the cancellation first surfaces or should have been known, even if the solicitation is not cancelled until after proposals have been submitted and evaluated, or even if discovered during the course of a protest. SEI Grp., Inc., B-299108, Feb. 6, 2007, 2007 CPD ¶ 35 at 3.

Our conclusion is not changed by Inalab's assertion that the agency's proffered rationales for cancellation are merely a pretext to avoid scrutiny of the agency's actions. 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 Sols. Grp., Inc., *supra*, at 4; American Artisan Prods., Inc., B-292559, B-292559.2, Oct. 7, 2003, 2003 CPD ¶ 176 at 9. Although the agency did not discover its in-house capabilities until after the procurement was protested, the record does not provide convincing proof that that the agency acted in bad faith.

The protester claims that "the anticipated cost savings are illusory" and that the agency has underestimated the manpower required to perform the work in-house. Inalab Opp'n to Third Req. for Dismissal, at 5. While we agree that the agency's savings estimate for personnel expenses may not account for all of the relevant costs, any calculation error does not diminish the fact that DOI has also identified a separate source of cost savings in the use of existing Oracle services. In sum, we find no basis to question the agency's conclusion that in-house performance would result in some cost savings or provide other benefits. Accordingly, we find that the agency's cancellation was reasonable. See Mastery Learning Sys., *supra*, at 3

(cancellation of the solicitation in order to perform the work in-house was not objectionable where the agency articulated a reasonable basis for its decision).⁷

OCI Challenge

Inalab alleges that i360's participation in the procurement results in two OCIs: biased ground rules and unequal access to information. In this respect, the protester asserts that the agency failed to mitigate the OCIs by either amending the solicitation to ensure that i360 would not have an unfair competitive advantage or by excluding i360 from participation in the procurement. Protest at 6-7.

The FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. As relevant here, a biased ground rules OCI arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract. FAR §§ 9.505-1, 9.505-2. In these cases, the primary concern is that the firm could skew the competition, whether intentionally or not, in favor of itself. Energy Sys. Grp., B-402324, Feb. 26, 2010, 2010 CPD ¶ 73 at 4. An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract. FAR § 9.505(b); Cyberdata Techs., Inc., B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 6.

Here, the RFQ provided that an in-house contractor had conducted an analysis of the agency's Oracle federal financials reports, concluding that 72 had broad applicability, were used frequently, and would support up to 90 percent of the reporting requirements. RFQ § 2.1. The awardee would be required to leverage this analysis. Id. § 2.4.4.1. Vendors were required to "discuss in detail [their] understanding of the project, its purpose, scope, and the degree of difficulty in successfully accomplishing the project." Id. § 4.2.1.1. They were also asked to "describ[e] how the work will be performed" and "[i]dentify potential problems and

⁷ The protester further asserts that "DOI failed to undertake the analysis required before initiating Government performance of a previously commercial activity" under Office of Management and Budget ("OMB") Circular No. A-76(5)(d) (May 29, 2003). Inalab Opp'n to Third Req. for Dismissal, June 20, 2016, at 6. In this regard, however, Inalab fails to explain how OMB Circular No. A-76 imposes any obligation upon the agency in this procurement.

proposed solutions.” Id.; id. § 4.2.1. Quotations would be evaluated for “[u]nderstanding of the work, including creativity and thoroughness shown in understanding the objectives of the SOW [statement of work], specific tasks, and planned execution of the project.” Id. § 5.3.1. The agency would also look for “[e]vidence of specific methods and techniques for completing each discrete task, to include quality assurance, innovation, and customer[]service, and ability to support the full range [of] tasks required.” Id.

We agree with Inalab that “DOI used the business analysis set forth above to shape the RFQ for this procurement.” Protest at 7. We also agree that “the Contractor prepared the analysis and is the only contractor who had access to it . . . , [and] who knows the level of effort required by DOI for the migration of each of the 72 reports to OBIEE.” Id. In this respect, the agency’s decision not to exclude the in-house contractor, i360, from the competition, is a concern. Moreover, there is no evidence that the agency ever commenced--let alone completed--an OCI analysis, despite the fact that the issue was first raised in April 2016. We are also troubled by the agency’s first proposed corrective action to cancel the solicitation and award the entire requirement to i360 without competition.⁸

However, as described above, the agency’s second proposed corrective action--to cancel the procurement and perform the requirement with government employees is not objectionable. The agency’s cancellation of the solicitation eliminates the possibility that the work would be performed by i360. Because, we conclude that the agency had a reasonable basis to cancel the solicitation, we correspondingly conclude that the potential OCIs resulting from the procurement are no longer before us. We therefore view the protester’s argument as academic because there is no pending solicitation. In this regard, we do not consider academic protests because to do so would serve no useful public policy purpose. Dyna-Air Eng’g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132. Accordingly, this protest ground is dismissed.

⁸ See SMF Sys. Tech. Corp., B-292419.3, Nov. 26, 2003, 2003 CPD ¶ 203 at 6 (sustaining protest where, in response to protest, agency cancelled RFQ and issued an order for services on a noncompetitive basis); Superlative Techs., Inc., B-310489, B-310489.2, Jan. 4, 2008, 2008 CPD ¶ 12 at 7-9 (sustaining protest where agency’s cancellation of an RFQ was merely a pretext to avoid conducting a competitive procurement and resolving a potential bid protest).

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel