



Decision

Matter of: Monbo Group International

File: B-420925.2

Date: November 21, 2022

Dee Monbo, Monbo Group International, for the protester.
David A. Lank, Esq., Department of Health and Human Services, for the agency.
Katherine I. Riback, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's decision to take corrective action by cancelling solicitation is denied where the agency had a reasonable basis to cancel the solicitation.
 2. Protest challenging the agency's decision to resolicit requirement as a task order issued under an existing contract vehicle is dismissed where the task order value falls below the threshold for our Office's task order jurisdiction.
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DECISION

Monbo Group International, a small business of Owings Mills, Maryland, protests the corrective action being taken by the Department of Health and Human Services, Food and Drug Administration (FDA), following Monbo's earlier protest of FDA's issuance of a task order to Oak Ridge Associated Universities, Inc., of Oak Ridge, Tennessee. The task order was issued under request for quotations (RFQ) No. FDA-22-RFQ-1250996, for a research specialist to support FDA's diversity research on preparedness for the ongoing challenges to HIV diagnostics and blood safety. The protester maintains that the agency's decision to cancel the solicitation and acquire the position via a task order under a separate contract vehicle is improper.

We deny the protest.

BACKGROUND

In May 2022, the agency issued the solicitation, under General Services Administration (GSA) schedule contract GS-02F-0197X, for a post-doctoral research specialist level 2/biologist II position. AR, Tab 3, RFQ, Statement of Work at 1. The solicitation's

statement of work included certain requirements for the post-doctoral position, referred to “essential preferred criteria,” such as, “[e]leven or more years of training in the safe handling of human blood samples.” *Id.* The solicitation did not specify that vendors were required to submit a candidate’s resume for technical evaluation. The solicitation provided that the agency would make award to the lowest-priced, technically acceptable quotation. *Id.* at 11.

The agency received three quotations in response to the RFQ, with each vendor submitting only a price quotation. AR, Tab 2, Contracting Officer Statement (COS) at 2. The contracting officer determined that resumes of each vendor’s prospective candidates was necessary to ensure that the candidates met the RFQ requirements. The agency then requested that the vendors submit resumes of their prospective candidates and performed a technical evaluation by comparing each resume to the statement of work requirements. Based on this evaluation, the agency determined that Oak Ridge was the lowest-priced, technically acceptable vendor, and made award to that firm. *Id.*

On July 31, Monbo filed a protest against the award to Oak Ridge with our Office. In its protest, Monbo argued that the agency’s award to Oak Ridge was improper as Monbo had proposed the lowest-priced, technical acceptable offer. AR, Tab 4, Monbo Protest at 3. After reviewing Monbo’s protest, the agency determined that the solicitation was vague and failed to adequately describe the agency’s requirements because the RFQ did not require sufficient information from the vendors, such as resumes, for the agency to accurately determine whether a vendor could successfully perform the requirements. *Id.*; Tab 5, Memorandum to the File (Aug. 12, 2022) at 2.

The agency also determined that an existing indefinite-delivery, indefinite-quantity (IDIQ) contract issued by FDA for scientific support services, which was set aside for 8(a) firms, would better serve the agency’s needs. AR, Tab 7, IDIQ Contract at 23. The agency then announced corrective action consisting of terminating the award to Oak Ridge, cancelling the RFQ, and resoliciting the requirement using the existing IDIQ contract. COS at 2; AR, Tab 6, Agency Notice of Corrective Action. Specifically, the agency issued a task order to Midnight Sun Technologies, LLC, of Vienna, Virginia, under IDIQ contract No. 75F40122D0000 for a total estimated award value of \$336,230. Response to GAO Request (Nov. 15, 2022).

Our Office dismissed Monbo’s protest as academic on August 18. *Monbo Group International*, B-420925, August 18, 2022 (unpublished decision). This protest contesting the agency’s proposed corrective action followed.

DISCUSSION

Monbo challenges the corrective action taken by the agency, specifically its cancellation of the RFQ and decision to acquire the research specialist position via a task order under an existing IDIQ. In this regard, the protester argues that the original solicitation provided sufficient information for the agency to accurately determine its needs. The

protester further argues that the agency did not give appropriate consideration to Monbo's technical quotation in crafting its corrective action. The agency responds that it reasonably decided to cancel the solicitation because the solicitation as issued did not clearly specify the information that the agency required from vendors to determine whether their candidates met the solicitation's minimum qualification requirements, and that the FDA subsequently determined that another contract vehicle would better serve its needs.

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. *Quotient, Inc.*, B-416473.4, B-416473.5, March 12, 2019, 2019 CPD ¶ 106 at 3. We will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *DGC Int'l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3. Moreover, a contracting agency has broad discretion in deciding whether to cancel a solicitation, and need only establish a reasonable basis for doing so. *KNAPP Logistics Automation, Inc.--Protest & Costs*, B-404887.2, B-404887.3, July 27, 2011, 2011 CPD ¶ 141 at 3. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. *Logistics Solutions Group, Inc.*, B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 3. In addition, an 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 canceled until after quotations have been submitted and evaluated, after a contract has been awarded or, as here, after the filing of a protest against the award. See *Bluehorse*, B-412494, B-412494.2, Feb. 26, 2016, 2016 CPD ¶ 64 at 5.

In our view, the corrective action here is well within the broad discretion afforded to contracting agencies. As noted above, the agency determined that the terms of the solicitation's submission requirements were vague and, thus, the agency was unable to assess if the quotations received met its requirements. Specifically, the solicitation sought the services of a Ph.D. level research specialist with, among other qualifications, training in the safe handling of human blood sample and experience in HIV-1 and HIV-2 research, to support an agency research program. Yet, the solicitation did not require the submission of specific documentation of the vendors' particular proposed candidates, such as the submission of resumes, to assess whether the vendors' candidates met the agency's specific requirements. Accordingly, the agency found that the solicitation as issued was defective because it did not enable the agency to accurately determine whether vendors' candidates could successfully perform the requirements.¹

¹ While the agency requested and received resumes from the three vendors during the course of the procurement, doing so did not remedy the solicitation's failure to provide notice to potential vendors of the agency's qualification requirements for candidates nor did it provide notice of the agency's evaluation criteria or selection methodology of the same.

Accordingly, it was within the agency's discretion to cancel the procurement based on its concern that the procurement process was compromised by errors inherent in the solicitation. Since nothing in Monbo's protest demonstrates that the agency's corrective action was unreasonable or reflected an abuse of discretion, we deny Monbo's challenge to the agency's decision to terminate the award and cancel the solicitation issued under the GSA schedule contract.²

Next, Monbo contests the agency's issuance of a task order for the research specialist requirement to Midnight Sun under an existing IDIQ contract vehicle.

With regard to protests of task orders issued under civilian agency IDIQ contracts, GAO has jurisdiction to consider protests of task orders valued in excess of \$10 million. See 41 U.S.C. § 4106(f)(1)(B); *Alliant Sols., LLC*, B-415994, B-415994.2, May 14, 2018, 2018 CPD ¶ 173 at 4 n.8. Here, the agency states that the total estimated award value of the task order is \$336,230. Response to GAO Request (Nov. 15, 2022). Our Office therefore does not have jurisdiction over this matter because the estimated value of the task order falls beneath the monetary threshold for GAO to hear protests related to task orders issued under civilian agency IDIQ contracts. Under these circumstances, this issue is dismissed as we have no jurisdiction over this protest allegation.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

² Monbo also argues that the agency was biased against it. Comments at 3. Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Therefore, where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester and also that the agency bias translated into action that unfairly affected the protester's competitive position. *Networks Electronic Corp.*, B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 4 n.1. We find that the agency's cancellation of the solicitation here on the grounds that it failed to accurately state the agency's needs does not provide a basis to attribute prejudicial motives to the agency, and does not provide a basis for GAO to recommend that the agency reinstate the canceled solicitation and proceed with the source selection process.