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Decision

Matter of: Abt Associates, Inc.

File: B-421517; B-421517.2

Date: June 13, 2023

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DIGEST

Protest that agency improperly canceled a solicitation is denied where the record demonstrates that the agency reasonably canceled the solicitation based on concerns that the solicitation's performance work statement and evaluation criteria did not accurately reflect the agency's needs.

DECISION

Abt Associates Inc., of Rockville, Maryland, protests the cancellation of request for quotations (RFQ) No. 1588574, issued by the Environmental Protection Agency (EPA) for economics research and analysis. The protester argues that the agency lacked a reasonable basis to cancel the RFQ and that the cancellation was a pretext to avoid establishing a blanket purchase agreement (BPA) with Abt.

We deny the protest.

BACKGROUND

On September 13, 2022, the agency issued the RFQ, seeking technical support for environmental economics research and analysis for the EPA's National Center for Environmental Economics (NCEE). Contracting Officer's Statement (COS) at 1; Agency Report (AR), Exh. B11, RFQ e-Buy Description at 1-2. The RFQ was issued to holders of General Services Administration Federal Supply Schedule (FSS) contracts under special item number 541620, environmental consulting services. AR, Exh. B11, RFQ e-Buy Description at 2.

The RFQ sought to establish BPAs pursuant to Federal Acquisition Regulation subpart 8.4. The RFQ anticipated establishment of one “overall” BPA on an unrestricted basis, as well as a separate BPA for peer review and expert elicitation support, which was set aside for small businesses. AR, Exh. B11, RFQ e-Buy Description at 1. This protest relates only to the unrestricted overall BPA.

The RFQ included a performance work statement (PWS) providing that the contractor under the overall BPA would “perform economic analyses, focusing on the causes and consequences of changes in the use and quality of domestic and some international natural resources.” AR, Exh. B1, PWS at 4. The PWS identified and described multiple types of analyses that the contractor would be expected to perform, including baseline analyses, evaluation of changes to the baseline as a result of the implementation of agency programs, changes in emissions released to the environment, development of environmental indicators, benefit-cost analyses, economic impacts, environmental justice, and program evaluation. *Id.* at 4-16.

The RFQ provided that award would be made on a best-value tradeoff basis, considering price and four non-price factors (listed in descending order of importance): technical approach, corporate management plan, staffing approach, and past performance. AR, Exh. B12, RFQ at 32. The non-price factors, when combined, were significantly more important than price. *Id.*

The RFQ provided that the agency would evaluate the technical approach factor, in part, by assessing:

[t]he [vendor’s] demonstrated approach to perform tasks associated with research, evaluation and analysis of data, models and analytic methods in connection with issues relating to environmental economics; benefit-cost analysis; economic impact analyses, including estimation of the distribution of benefits and costs and economy wide impacts; human and ecological risk assessment and risk communication used to support benefits estimation; behavioral economics applied to environmental issues; and the treatment of uncertainty in risk assessment and economic analysis.

Id. Under the staffing plan factor, the agency’s evaluation would include the vendor’s “demonstrated ability to provide qualified staffing resources across all task and subtask areas outlined in the [PWS].” *Id.* The RFQ instructions for preparation of quotations repeated these evaluation criteria and directed vendors to address them. *Id.* at 28-29.

The agency received two timely quotations in response to the unrestricted portion of the RFQ, including a quotation from the protester.¹ COS at 4. The agency then convened a technical evaluation committee (TEC) to evaluate quotations. *Id.* The TEC evaluated

¹ For ease of reference, this decision refers to the other vendor that submitted a quotation as Vendor B.

quotations and prepared a draft report containing the results of its evaluation. *Id.*; AR, Exh. J, Draft TEC Report.

The draft non-price evaluation ratings² for the protester and Vendor B were as follows:

	Abt	Vendor B
Technical Approach	Good	Exceptional
Corporate Management	Good	Good
Staffing Approach	Good	Exceptional
Past Performance	Satisfactory Confidence	Substantial Confidence

AR, Exh. J, Draft TEC Report at 6.

The TEC assessed a draft weakness to Abt’s quotation because Abt “chose to provide a limited amount of information describing [its] technical capabilities to perform analyses on climate change, [social cost of greenhouse gases], [i]ntegrated [a]ssessment [m]odeling, and environmental justice.” *Id.* at 13. The TEC noted that Abt’s technical capabilities in these areas [DELETED]. *Id.*

By contrast, the TEC assessed a draft strength to Vendor B’s quotation because the quotation demonstrated “[DELETED] climate change.” *Id.* at 26. This draft strength was supported by the TEC’s observation that the vendor “would provide NCEE with [DELETED] from climate change.” *Id.* at 26.

After the TEC submitted its draft report, the chair of the TEC sent an email to the contract specialist regarding a potential shortcoming of the solicitation. COS at 4. Specifically, the TEC chair noted: “we think that our expanded climate change analytic requirements are not going to be fully met by the [vendor] in line” for award. AR, Exh. C, Email from TEC Chair to Contract Specialist at 2. When asked to provide more information, the TEC chair stated: “the PWS wasn’t written to provide details about specific modeling and data sources that would be supporting climate analytic work.” *Id.* at 1. The TEC chair wrote that while both vendors made some reference to climate change analyses in their quotations, the evaluation of quotations was limited to the types of analyses called for in the PWS. *Id.* at 2. The chair noted that the evaluators could therefore not assign significant weaknesses or deficiencies to quotations that did not address climate change analysis. *Id.*

During the development of this protest, including at a hearing conducted by our Office to consider testimony by the TEC chair, the agency explained the concern expressed in the TEC chair’s emails.

In brief, the PWS for this solicitation was first drafted during the prior presidential administration. COS at 5. According to the TEC chair, NCEE was not permitted to use

² The record does not contain any information regarding the proposed or evaluated prices of either Abt or Vendor B.

contract resources for climate change work at that time. Hearing Transcript (Tr.) at 25-26. Accordingly, the PWS was written with broad language emphasizing all of the statutes that the EPA is charged with implementing and supporting. COS at 5. The agency asserts that during the current administration, NCEE was directed to expand the scope and complexity of the technical economic analyses that it performs to support evaluations of climate change policies and regulations. *Id.* at 6. Further, the agency identifies legislative enactments during the current administration that have provided increased funding expressly designated for climate change analysis. These include the Infrastructure Investment and Jobs Act, Pub L. No. 117-58, 135 Stat. 429 (2021); the Inflation Reduction Act of 2022, Pub L. No. 117-169, 136 Stat. 1818; and the Consolidated Appropriations Act for Fiscal Year 2023, Pub L. No. 117-328, 136 Stat. 4459 (2022). See Tr. at 27-35.

As a result of these policy and funding changes, the agency believes that “at least 50 percent or more” of the requirement will now involve assisting with climate analytical work. Tr. at 23-24. As compared to its needs when the PWS was initially drafted, the agency also foresees an increased need for assistance with environmental justice analyses and evaluation of other agencies’ projects in accordance with the National Environmental Policy Act. *Id.*

Although some of these policy changes and appropriations occurred prior to the issuance of the RFQ, the agency did not significantly reevaluate or rewrite the PWS, instead believing that the PWS’s broad language and brief references to the current administration’s priorities (such as climate change and environmental justice) would be sufficient to meet the agency’s needs and evaluate vendors’ capabilities. COS at 5-6. For example, the PWS’s lists of relevant regulations and executive orders in force at the time of the RFQ include an executive order issued by the current administration: Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” See AR, Exh. B1, PWS at 2, 14.

During the evaluation of quotations, however, the agency recognized that the RFQ’s technical evaluation factors and broadly-drafted PWS did not permit the agency to evaluate whether vendors demonstrated the capability to perform specific types of work not identified in the PWS. Tr. at 23, 38-39. This meant that the agency could not adequately evaluate vendors’ capabilities to conduct climate change analyses--a priority need going forward--because such analyses were not required by the PWS. COS at 6; Tr. at 23. Relatedly, the agency was concerned that, in an attempt to ensure that its needs were met, it may have been evaluating vendors based on undisclosed evaluation criteria. Tr. at 60-61.

After the TEC chair brought these concerns to the attention of the contract specialist, the agency convened a meeting among the contracting officer, the TEC chair, and other NCEE staff. COS at 5. At this meeting, the agency discussed possible courses of action, including amending the solicitation to reflect the agency’s new priorities. COS at 7. However, the contracting officer considered this a significant enough change in scope to warrant cancellation rather than amendment, particularly because the agency believed that had the original RFQ emphasized the climate change mandate, more

vendors may have submitted quotations. *Id.* In this respect, the TEC chair explained that he was aware of “a lot more climate analytical work being produced by companies and other vendors, other organizations that . . . were not part of the offering teams [the agency] had received,” and that the agency would expect to receive quotations from these additional vendors. Tr. at 51. Further, following market research, the agency identified vendors with FSS contracts that perform work in the climate change and environmental justice field. Tr. at 52. The agency believes these vendors will be more inclined to submit quotations if the PWS is “more in [their] wheelhouse,” rather than the general “cover[] all the bases” PWS contained in the RFQ. *Id.*

On February 28, 2023, the agency notified vendors of its decision to cancel the solicitation. COS at 7; AR, Exh. F, Email from Agency to Abt at 3. This protest followed.

DISCUSSION

Abt argues that the agency lacked a reasonable basis to cancel the solicitation, and that the cancellation decision was a pretext to avoid establishing a BPA with Abt. The agency responds that it reasonably decided to cancel the solicitation because of its changed needs. For the reasons stated below, we find the agency’s cancellation decision to be reasonable.

In a negotiated procurement such as this one, a contracting agency has broad discretion in deciding whether to cancel a solicitation and need only have a reasonable basis for doing so. *A-Tek, Inc.*, B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. *MedVet Dev. LLC*, B-406530, June 18, 2012, 2012 CPD ¶ 196 at 2-3. So long as there is a reasonable basis for doing so, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until quotations have been submitted and evaluated. *Harmonia Holdings Group, LLC*, B-417475.5, B-417475.6, Jan. 2, 2020, 2020 CPD ¶ 18 at 3. Accordingly, cancellation of a solicitation is reasonable where an agency determines during the evaluation of quotations that the evaluation criteria stated in the solicitation do not accurately assess the degree to which quotations meet the agency’s needs. See *TaxSlayer LLC*, B-411101, May 8, 2015, 2015 CPD ¶ 156 at 7-10. Where the record reflects that there was a reasonable basis to cancel the solicitation, we will not find that the agency abused its discretion, even though it could have taken a different course of action by amending the solicitation.³ See *Skyline ULTD, Inc.*, B-408961, Dec. 27, 2013, 2013 CPD ¶ 298 at 2.

³ The protester cites our Office’s prior decisions as standing for the proposition that “where, as here, a solicitation is cancelled on the basis of changed requirements, the procuring agency must document not only the scope of the new requirements, but how they differ such as to require outright cancellation instead of merely amending the existing solicitation.” Protest at 5 (citing *Walker Dev. & Trading Grp., Inc.*, B-413924,

Here, the agency explains that it anticipates that a majority of its needs under this solicitation will be for climate change analyses, a change in its anticipated needs that is not reflected in the PWS. COS at 5-6; Tr. 23-24.⁴ The protester has not provided us with any basis to question the agency's characterization of its present needs.

Further, the agency explains that the solicitation as written did not allow for an adequate evaluation of each vendor's ability to perform climate change analyses, which is particularly problematic in light of the importance of that work to the overall effort. COS at 7; see, e.g., Tr. at 38-39. Review of the RFQ supports the agency's concern. For instance, the PWS makes exactly three references to climate change: two are inclusions of Executive Order 13990 in lists of operative regulations and executive orders; the third is in the background section as part of a general description of the work that NCEE performs. AR, Exh. B1, PWS at 1, 2, 14. These references do not describe any type of climate change analysis that the contractor will be expected to perform. *Id.* Notably, of the twelve different types of analyses (and ten identified sub-types) listed in the PWS, none explicitly identify or describe climate change analysis. *Id.* at 4-16. Further, the solicitation's evaluation criteria provided that vendors' technical capabilities would be evaluated with reference to a list of analyses--such as benefit-cost analysis and economic impact analysis--that does not mention climate change. AR, Exh. B12, RFQ at 32. Similarly, vendors' staffing plans would be evaluated for their ability to provide "qualified staffing resources across all task and subtask areas outlined in the [PWS]," which did not include climate change analyses. *Id.* In this context, the agency was reasonably concerned that the RFQ did not permit it to appropriately evaluate the

Jan. 12, 2017, 2017 CPD ¶ 21 and *Pro-Fab, Inc.*, B-243607, Aug. 5, 1991, 91-2 CPD ¶ 128). This incorrectly characterizes our decisions. Our Office sustained the protest in *Walker* because, despite being provided multiple opportunities, the agency "failed to produce an agency report that coherently addressed the agency's rationale for the cancellation of the solicitation." *Walker Dev., supra* at 6. In *Pro-Fab*, we found that the record demonstrated that technical changes to the agency's requirements would have an "inconsequential effect," and that the agency's argument that the changes would lead to cost savings or increased competition was unsupported and speculative. *Pro-Fab, supra* at 4-5. In neither decision did our Office state that an agency is required to separately justify its decision not to amend a solicitation where the agency otherwise demonstrates that it reasonably canceled the solicitation due to changed requirements.

⁴ We note that our Office generally considers post-protest explanations, such as the hearing testimony of the TEC Chair, that provide a detailed rationale for contemporaneous conclusions and fill in previously recorded details, so long as the explanations are credible and consistent with the contemporaneous record. *TaxSlayer, supra* at 8. We find the hearing testimony of the TEC chair to be both credible and consistent with the contemporaneous record. In any event, new or additional cancellation rationales, provided by an agency during the development of a protest, are acceptable so long as they would have supported cancellation had they been advanced originally. *Id.* at 9.

degree to which vendors demonstrated their ability to support the agency in conducting climate change analyses.⁵

The protester argues that the agency's decision to cancel the solicitation was nonetheless unreasonable because the agency's needs are met by the PWS, because any change in the agency's needs occurred prior to the issuance of the RFQ, and because the agency's cancellation decision was pretextual. We do not find these arguments persuasive.

The protester argues that the RFQ as issued meets the agency's needs because the specific work that the agency will require is included within the broad terms of the PWS. In support of this argument, the protester relies on language in the PWS such as a statement that the contractor will "assess the costs of measures to adapt to and to mitigate environmental change." See AR, Exh. B.1, PWS at 4. The protester asserts that this language could include climate change, and that the agency would therefore be able to issue task orders under the BPA for any specific type of analysis it needs.

The protester misunderstands the agency's argument. The agency does not contend that it would be unable to issue task orders covering climate change or any other specific type of analysis. Rather, the EPA states that the failure of the PWS to specifically describe the primary work that the agency anticipates ordering prevents the agency from evaluating which vendor will best meet its needs. In this respect, the scenario presented by this solicitation is similar to that in *TaxSlayer*. There, the solicitation was for tax preparation software to be used by volunteers assisting low-income, elderly, and disabled taxpayers. *TaxSlayer*, *supra* at 1-2. During proposal evaluation, the agency recognized that the solicitation's evaluation criteria allowed for evaluation of the functional abilities of the software, but not of its ease of use--which was particularly important in light of the intended use of the software by volunteers. *Id.* at 7. That is, the agency could evaluate proposals for whether the proposed software could do all of the tasks the agency required, but could not evaluate whether the software best met the agency's needs. In these circumstances, our Office found that the agency reasonably determined that the solicitation did not reflect its needs, and therefore reasonably canceled the solicitation. *Id.* at 10.

Abt also argues that the agency's decision to cancel the solicitation was unreasonable because the agency knew of its changed requirements--*i.e.*, the increased focus on climate change analysis--prior to issuing the RFP. However, so long as there is a reasonable basis for doing so, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until quotations

⁵ In this context, we note that the agency's evaluators assessed a draft weakness to Abt's quotation and a draft strength to Vendor B's quotation for the manner in which the quotations described the vendors' climate change analysis capabilities. See AR, Exh. J, Draft TEC Report at 13, 26. While we do not determine whether this would have constituted the application of unstated evaluation criteria, we find nothing unreasonable about the agency's concern in this regard.

have been submitted and evaluated. *Harmonia Holdings Grp.*, *supra* at 3. Thus, a protester's argument that an agency should have more swiftly recognized its changed requirements is irrelevant to our analysis of whether the agency has articulated a reasonable basis to cancel a solicitation. *Meridian Knowledge Sols., LLC*, B-420150.4, *et al.*, Aug. 25, 2022, 2022 CPD ¶ 215 at 7. In short, sometimes wisdom comes late, and the fact that the agency realized its needs had changed later than the protester might have preferred gives us no basis to question an otherwise reasonable change in the agency's requirements, and no basis to sustain a protest. *Id.*

The protester further argues that the agency's decision to cancel the solicitation was merely a pretext to avoid selecting Abt for establishment of the BPA. Here, the protester relies on the TEC chair's statement that the vendor "in line" for award would not meet the agency's needs,⁶ as well as contemporaneous notes included in the agency report indicating that the agency felt that Vendor B would better suit the agency's needs but was priced too high. See AR, Exh. C, TEC Chair Email to Contract Specialist at 2; AR, Exh. G, Meeting Notes at 1, AR, Exh. H, Meeting Notes at 1.

As stated above, an agency has broad discretion in deciding whether to cancel a solicitation and need only have a reasonable basis for doing so. *A-Tek, Inc.*, *supra* at 2. Where a protester has alleged that the agency's rationale for cancellation is but a pretext to avoid making a source selection decision on a competitive basis or to avoid the resolution of a protest, we will closely examine the reasonableness of the agency's actions in canceling the solicitation. See *Gonzales-McCaulley Investment Grp., Inc.*, B-299936.2, Nov. 5, 2007, 2007 CPD ¶ 192 at 5. That said, even if an agency's decision to cancel a solicitation may have been motivated, in part, by an inappropriate interest, we will not sustain a protest of the cancellation if the agency establishes a reasonable basis for the cancellation, such as a change in the agency's requirements. *Meridian*, *supra* at 8. Here, because we find that the agency's cancellation decision was reasonably based on a change in the agency's requirements, the protester's argument that the decision was also motivated by a desire to avoid an award to Abt, even if true, would provide no basis to sustain the protest. See *id.*

In any event, we do not find that the record supports the protester's argument. In this respect, it is far from clear that, had a BPA been established, it would have been established with Abt. The contemporaneous draft record reflects that Vendor B was more highly rated than Abt on three of the four evaluation factors, including the most important factor. See AR, Exh. J, Draft TEC Report at 5. While the record reflects that the agency had a concern that Vendor B's evaluated technical superiority was not great enough to justify its higher price, the decision to cancel the solicitation was made while the contracting officer "was in still in the process of reviewing the draft TEC Report, and the [c]ontract[] [s]pecialist was in the process of evaluating the [vendors'] pricing and outlining the award decision." COS at 4. In this regard, while the protester may argue the agency in some way had concluded it should establish a BPA with the protester, the

⁶ The TEC chair confirmed that this was a reference to Abt. Tr. at 136.

record does not contain any indication that the agency had reached a final award decision.

Further, the agency points out that a future competition, under a revised RFQ, will give all vendors--including Abt--the opportunity to submit quotations that better address how each vendor can meet the agency's needs. We note, as discussed above, that the agency's evaluators found a draft weakness in Abt's quotation because Abt "chose to provide a limited amount of information" regarding its climate change analysis abilities. AR, Exh. J, Draft TEC Report at 13. But, the agency also recognized that it had not asked for specificity in that area. Tr. at 58. The TEC chair stated the agency's hope that under a revised RFQ, "with the benefit of more specificity and knowing more what [the agency is] looking for," Abt would submit a better quotation. Tr. at 118-119. Under these circumstances, we do not find that the agency canceled the solicitation as a pretext to avoid a competitive award to Abt.

Accordingly, we find that the agency reasonably canceled the solicitation based on its concern that the RFQ did not reflect its current needs.

The protest is denied.

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General Counsel