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Decision

Matter of: FCN Inc.

File: B-424249

Date: May 13, 2026

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Nickolas S. Card, Esq., Justin M. Wakefield, Esq., and Richard L. Hatfield, Esq., Department of the Treasury, for the agency.
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DIGEST

1. Protest challenging various solicitation requirements as being unnecessary to meet the agency's needs is denied where the agency has provided reasonable explanations regarding the necessity of the challenged requirements.
 2. Protest that "brand name or equal" procurement establishes a sole-source procurement is denied where the solicitation placed vendors on notice that either the named product or an "equal" product would be considered in the agency's evaluation. Further, protester's subsequent assertion, following the solicitation closing date and receipt of the agency report responding to its protest, that the solicitation fails to adequately describe the salient characteristics associated with particular brand name products is dismissed as untimely where the alleged defect was apparent from the face of the solicitation.
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DECISION

FCN, Inc., of Rockville, Maryland, protests the terms of request for quotations (RFQ) No. 2032H5-26-Q-0011, issued by the Department of the Treasury, Internal Revenue Service (IRS), as a competitive small business set-aside to contractors holding indefinite-delivery, indefinite-quantity contracts under the National Aeronautics and Space Administration's (NASA) Solutions for Enterprise-Wide Procurement (SEWP) government-wide acquisition contract. The solicitation was issued as a "brand name or equal" procurement pursuant to the agency's "virtualization modernization initiative," and contemplates issuance of a single task order to support the agency's "transition from the current [platform] to an alternative scalable enterprise platform." Agency

Report (AR), Exh. D.1.2, Performance Work Statement (PWS) at 1.¹ FCN protests that the terms of the solicitation are “unduly restrictive” in that they reflect requirements that are “not necessary” to meet the agency’s actual needs, and further complains that the solicitation requires use of particular Nutanix products and thereby creates a “de facto sole source procurement.” Protest at 3, 5-8.

We deny the protest in part and dismiss it in part.

BACKGROUND

On January 26, 2026, the agency issued RFQ No. 2032H5-26-Q-0011, seeking quotations to migrate “approximately 10,000 virtual machines . . . from the existing VMware infrastructure to the new designated replacement platform,” that is, to “an alternative scalable enterprise platform.” AR, Exh. D.1.2, PWS at 1-2. More specifically, the solicitation states that it is “seeking alternative solutions that can deliver enhanced resiliency, improved scalability, and reduced operational costs,” and identifies Nutanix as the brand name product that offers such an “alternative” platform. AR, Exh. D.1.1, RFQ at 3; AR, Exh. D.1.2, PWS at 1. The solicitation requires vendors’ quotations to “encompass hardware, software, services, and support” for a 1-year base period and four 1-year option periods.² AR, Exh. D.1.1, RFQ at 3.

Among other things, the solicitation requires that a vendor’s solution must: “support live, in-place conversion between hypervisors without data movement”;³ “aggregate direct-attached storage . . . into a single, shared storage pool”; include a disaster recovery component that “requires no add-on or separately licensed software”; and provide for “installation and configuration of all software, within 7 days of delivery.” AR, Exh. D.1.2, PWS at 4, 7, 10. The solicitation provides for a best-value source selection decision based on a trade-off between the following evaluation factors: (1) salient

¹ The page numbers referenced in this decision are the Adobe PDF page numbers in the documents submitted.

² Previously, in August 2025, the agency issued RFQ No. 2032H5-25-Q-00059, which similarly sought solutions to migrate from the agency’s current virtualization platform to an alternative platform. In December 2025, pursuant to that solicitation, the agency issued a task order to Impres Technology Solutions, Inc., of Round Rock, Texas (an authorized Nutanix reseller), based on its Nutanix-based solution; thereafter, FCN filed a protest challenging that action. In January 2026, the agency advised GAO that it would take corrective action in response to FCN’s protest, elaborating that it would “cancel the current solicitation and issue a new solicitation that more accurately reflects the needs of the Agency.” Prior Notice of Corrective Action, B-424173, Jan. 8, 2026, at 1. Accordingly, we dismissed the protest. *FCN Inc.*, B-424173, Jan. 14, 2026 (unpublished decision).

³ The agency states that a hypervisor is “software that aggregates Agency compute and storage resources and allows the Agency to create and run virtual machines.” Agency Resp. to Req. for Definitions at 1.

characteristics;⁴ (2) technical approach; (3) management approach; (4) corporate experience; (5) past performance; and (6) price.⁵ AR, Exh. D.1.1, RFQ at 54.

The solicitation also includes various attachments, including attachment 3, titled “Hardware & Software List (Brand Name or Equal)”; under the heading “Description (Brand Name Nutanix or Equal),” attachment 3 identifies various Nutanix products that vendors must either include in their proposed solutions or, alternatively, include “equal” products. See, e.g., AR, Exh. D.1.4, RFQ attach. 3 at BOM [bill of materials] List Tab, line 3. In this context, the solicitation directed each vendor to “provide documentation that it meets the Name Brand or Equal Salient Characteristics listed in the SOW [statement of work⁶] and Attachment 3 Hardware & Software List.” AR, Exh. D.1.1, RFQ at 50. However, nothing in RFQ attachment 3 identifies any characteristics of the Nutanix products listed there that “equal” products must meet; nor does the solicitation provide a connection between the salient characteristics listed in PWS section C.6 to the specific Nutanix products listed in attachment 3.

Prior to the February 13, 2026 amended closing date for submission of quotations, FCN filed this protest challenging the terms of the solicitation,⁷ and timely submitted a quotation.⁸

DISCUSSION

FCN asserts that the solicitation’s requirements unduly restrict competition in that they include requirements that are unnecessary to meet the agency’s needs, and further

⁴ Section C.6 of the PWS, titled “Salient Characteristics,” lists over 40 “technical, architectural, and operational requirements” that a non-Nutanix-based solution must “meet or exceed.” AR, Exh. D.1.2, PWS at 10-12.

⁵ The solicitation states that “[t]echnical [non-price] evaluation factors are [listed] in descending order of importance” and “[a]ll technical evaluation factors . . . when combined, are significantly more important than price.” AR, Exh. D.1.1, RFQ at 54.

⁶ We understand that the reference to the “SOW” is a typographical error and should refer to the PWS.

⁷ The independent government cost estimate for this task order is [REDACTED]. Contracting Officer’s Statement (COS) at 1. As the anticipated value of the task order here exceeds \$35 million, this protest is within our Office’s jurisdiction to resolve protests involving task orders issued pursuant to NASA’s SEWP government-wide acquisition contract. 10 U.S.C. § 3406(f)(B).

⁸ FCN asserts that its quotation will “achieve the Agency’s goals of enhancing resiliency, scalability, and compliance while lowering operational costs and complexity.” Protest at 4-5.

complains that such terms create a “de facto sole source procurement” by requiring that vendors provide designated Nutanix products. Protest at 3, 5-8.

Alleged Unnecessary Requirements

First, FCN asserts that the terms of the solicitation are “unduly restrictive” because they include requirements that are “not necessary” to meet the agency’s actual needs. Protest at 3. More specifically, FCN challenges various solicitation requirements, including the requirements to provide for: “a single, shared storage pool”; “in-place conversion between hypervisors without data movement”; “disaster recovery . . . with ‘no add-on or separately licensed software’”; and software installation “within seven business days of hardware delivery.” *Id.* at 9.

The determination of the government’s needs and the best method of accommodating them is primarily the responsibility of the procuring agency, since its contracting officials are most familiar with the conditions under which supplies, equipment, and services have been employed in the past and will be utilized in the future. *Columbia Imaging, Inc.*, B-286772.2, B-287363, Apr. 13, 2001, at 2. To the extent a protester challenges a specification as unduly restrictive, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. *Smith and Nephew, Inc.*, B-410453, Jan. 2, 2015, at 5. The adequacy of the agency’s justification is ascertained through examining whether the agency’s explanation is reasonable, that is, whether it can withstand logical scrutiny. *Id.*; *Trident World Sys., Inc.*, B-400901, Feb. 23, 2009, at 3. A protester’s disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them does not show that the agency’s judgment is unreasonable. *Apogee Eng’g, LLC*, B-415976, May 1, 2018, at 3.

Here, the agency has provided detailed explanations regarding the basis for each of the solicitation requirements that the protester alleges are unnecessary. COS at 3-5; Memorandum of Law (MOL) at 6-8. We have reviewed the agency responses and find no basis to question them.

For example, with regard to the requirement for a single, shared storage pool, the agency states:

Under a shared storage pool model, the storage component of the solution can be augmented without forcing updates to the solution’s compute components. This reduces the cost of expanding storage for the platform and reduces the complexity of doing so. The Agency would have more granular control over platform expansion because storage and compute capabilities can be independently modified. So, during day-to-day operations (e.g., provisioning laptops to new employees), the Agency will have more flexibility in how it chooses to expand.

COS at 4.

Next, in response to FCN's complaints regarding the requirement for conversion between hypervisors without data movement, the agency responds:

The preparation and downtime required to migrate "live" and without data movement is significantly lower than the alternative. Without the ability to convert live, migrating between hypervisors can be complicated. For instance, for a non-live migration requiring data movement, applications must go offline, which requires additional work for the Agency, including additional pre-migration backup related to data movement. Live, in-place conversion without requiring data movement avoids this problem entirely because the virtual machine undergoing migration can continue to operate normally. The Agency benefits because any downtime related to the conversion (and the severity of such downtime) would be significantly reduced.

Id. at 5.

As yet another example, in addressing the requirement for disaster recovery (DR) with "no add-on or separately licensed software," the agency states:

FCN's [protest] ignores the heightened potential for failure introduced by a separately licensed DR solution. Separately bundled DR software creates additional complexity for the Agency, increasing the risk the migration will fail. It is reasonable for the Agency to determine it requires first-party vendor expertise to manage its DR solution; integrated DR software ensures DR updates move in lockstep with updates to the broader virtualization platform, eliminating the possibility that virtualization migration would be threatened because updates broke compatibility.

MOL at 7-8; see COS at 5.

Finally, in responding to FCN's complaint regarding the requirement for software installation "within seven business days of hardware delivery," the agency states:

The Agency has business and operational reasons for requesting a short migration timeline. Most obviously, delaying the start of migration would require the Agency to stay on (and continue paying for) the current virtualization environment. In addition, the IRS is engaging in a virtualization migration project. Moving to a modern virtualization solution would allow the program to more effectively coordinate with other IRS business units.

MOL at 10. In addition, the agency explains, the required timeframe is in line with the agency's reasonable need for "mature solutions that are ready for deployment." *Id.*

Based on our review of the record here, we find the agency's responses to FCN's challenges regarding the necessity of the various solicitation requirements to be sufficient. Although FCN may disagree with the agency's assessment of its needs, the protester's disagreement with the agency's approach and assessments, without more, does not render the agency's judgments unreasonable. Accordingly, FCN's allegations in that regard are denied.

Alleged Sole-Source Procurement and Failure to Identify Salient Characteristics for the Specific Brand Name Products

Next, FCN complains that the solicitation "establish[es] a de facto sole source procurement." Protest at 9. More specifically, while FCN's protest generally acknowledges the "or equal" language used throughout the RFQ, FCN asserts that RFQ attachment 3 requires that vendors' proposed solutions include specific Nutanix products, such as "Nutanix nodes and [Nutanix] infrastructure bundles."⁹ *Id.* at 9-10. In response to these assertions, the agency points out that the provisions of RFQ attachment 3 clearly placed vendors on notice that *either* the named Nutanix product, *or* an "equal" product, would be considered in the agency's evaluation of quotations. MOL at 10-12. Accordingly, the agency maintains that the solicitation's references to Nutanix "or equal" products does not create a sole-source procurement. *Id.*

In its comments following receipt of the agency's response to its protest, FCN asserts--for the first time--that the solicitation is defective because "it is unclear how the Agency expects an offeror to determine what an 'equal' product must include" based on RFQ attachment 3 "when the product description simply lists the Nutanix product rather than the [product's] performance specifications." Comments at 7-8. In this regard, FCN further complains that vendors are "le[ft] . . . to guess what the salient characteristics of the Nutanix product[s] are and whether an alternative product will be acceptable." *Id.* at 8.

We have recognized that solicitations calling for "brand name or equal" products are permissible, provided the solicitation requirements reasonably reflect the agency's needs. *See, e.g., T-Mobile USA, Inc.*, B-418394, Apr. 8, 2020, at 5-8. However, our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *Verizon Bus. Network Servs., Inc.*, B-419271.5 *et al.*, Apr. 26, 2021, at 14. Under these rules, a protest based on alleged improprieties in a

⁹ More specifically, FCN's protest asserts that RFQ attachment 3 identifies three specific Nutanix brand name products that proposed solutions must incorporate, including "NX-8170-G9" nodes and the "NTX-HCI-BNDL," as well as the Nutanix "Cloud Platform Ultimate Software License." *See, e.g., AR*, Exh. D.1.4, RFQ attach. 3 at BOM Tab, line 3; *e.g., id.* at Core Description Tab, lines 3, 7. The agency does not dispute that these references in RFQ attachment 3 identify specific Nutanix products. *See COS* at 4, 6; MOL at 8.

solicitation that are apparent prior to the time set for submission of proposals or quotations must be filed prior to that time. 4 C.F.R. § 21.2(a)(1). Finally, where a protester initially files a timely protest, and later supplements it with independent grounds of protest, the later submissions must satisfy the timeliness requirements, since our regulations do not contemplate the piecemeal presentation of protest issues. See, e.g., *Alfa Consult S.A.*, B-298164.2, B-298288, Aug. 3, 2006, at 3 n.2.

Here, as noted above, the RFQ was issued as a “brand name or equal” procurement; identifies Nutanix as the brand name product; and identifies multiple “salient characteristics” that an “equal” product “must meet or exceed.” AR, Exh. D.1.2, PWS at 1, 10-12. As also noted above, RFQ attachment 3 is titled “Hardware & Software List (Brand Name or Equal)” and further includes the heading “Description (Brand Name Nutanix or Equal).” See, e.g., AR, Exh. D.1.4, RFQ attach. 3 at BOM List Tab. In other words, the RFQ clearly states that a vendor’s proposed solution must either include the Nutanix brand name products or “equal” products, and the RFQ does not preclude consideration of a product manufactured by another company. Accordingly, we reject FCN’s assertion that the identification of specific Nutanix products constitutes the creation of a “de facto” sole-source procurement.

Further, to the extent FCN complains that the solicitation failed to provide sufficient information connecting the solicitation’s stated salient characteristics to each of the Nutanix products listed in RFQ attachment 3, that alleged defect was clearly apparent from the face of the solicitation. In this regard, and as noted above, the solicitation directed each vendor to meet the characteristics listed in both the PWS and the RFQ attachment 3 list of hardware and software,¹⁰ and while section C.6 of the PWS identifies more than 40 “salient characteristics” of the proposed solution, nothing in the solicitation connects any of these characteristics to the specific Nutanix products identified in RFQ attachment 3, nor does RFQ attachment 3 identify any such characteristics. AR, Exh. D.1.1, RFQ at 50; AR, Exh. D.1.4, RFQ attach. 3. In other words, to the extent the solicitation did not trace the salient characteristics to the various products specified, and to the extent the agency leaves vendors to guess how the agency will evaluate vendors’ own tracing determinations, that alleged defect was clearly apparent from the face of the solicitation.

Nonetheless, FCN’s protest did not challenge the adequacy of the solicitation’s identification of the salient characteristics in the context of the specific Nutanix products listed in RFQ attachment 3 until after the solicitation closing date and after the agency had responded to FCN’s protest. On this record, FCN’s complaints regarding the adequacy of the solicitation’s identification of salient characteristics applicable to the

¹⁰ Specifically, as noted above, the solicitation stated: “The Quoter shall provide documentation that it meets the Name Brand or Equal Salient Characteristics listed in the SOW and Attachment 3 Hardware & Software List.” AR, Exh. D.1.1, RFQ at 50.

Nutanix products listed in RFQ attachment 3 are not timely raised and will not be considered.¹¹

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel

¹¹ Finally, in pursuing this protest, FCN has made various additional arguments that are not specifically discussed above, including assertions that: the agency has already determined that only a Nutanix-based solution will meet its needs; the agency failed to adequately document its market research for this procurement; and FCN's quotation will not be fairly considered. Protest at 3, 7-11; Comments at 3. We have considered all of FCN's arguments and find no basis to sustain its protest.