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Decision

Matter of: FCN Inc.--Reconsideration

File: B-424249.2

Date: June 25, 2026

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DIGEST

Request for reconsideration arguing that our Office improperly dismissed allegation as untimely is denied where our review of the record shows that the protester did not raise that allegation as part of its initial protest.

DECISION

FCN, Inc., of Rockville, Maryland, requests reconsideration of our decision, *FCN, Inc.*, B-424249, May 13, 2026, wherein we denied its challenge to the terms of request for quotations (RFQ) No. 2032H5-26-Q-0011, issued by the Department of the Treasury, Internal Revenue Service (IRS), for enterprise virtualization and cloud platform services. FCN argues that our decision erroneously dismissed one of its allegations as untimely.

We deny the request for reconsideration.

BACKGROUND

On January 26, 2026, the IRS issued the RFQ against the National Aeronautics and Space Administration's Solutions for Enterprise-Wide Procurement government-wide acquisition contract, to procure a new enterprise virtualization and cloud platform service. Agency Report (AR), Tab D.1.1, RFQ at 3; AR, Tab D.1.2, RFQ, Performance Work Statement (PWS) at 1.¹ The agency seeks to transition from Broadcom/VMware

¹ When referencing the report, GAO uses the Adobe PDF page numbers.

to the Nutanix Cloud Platform or an equal alternative. RFQ at 3. The selected contractor will be required to migrate approximately 10,000 virtual machines from the VMware platform to the replacement platform, and then provide support to maintain the platform's hardware and software. PWS at 2. The RFQ contemplated the issuance of a fixed-price task order to be performed over a 12-month base period and four 1-year option periods. RFQ at 3.

Award would be made on a best-value tradeoff basis considering price and non-price factors. RFQ at 54. Non-price factors included: salient characteristics, technical approach, management approach, corporate experience, and past performance. *Id.* The non-price factors, when combined, were significantly more important than the price factor. *Id.*

For the salient characteristics factor, the RFQ instructed vendors to provide documentation that they could provide the brand name products or equivalent alternative products identified in the hardware and software list. RFQ at 50. Amongst the products listed, some Nutanix products were identified, including a Nutanix hyperconverged infrastructure bundle (NTX-HCI-BNDL) and accompanying Nutanix nodes (NTX-8170-G9). AR, Tab D.1.4, RFQ, Hardware and Software List (BOM List and Core Description Spreadsheets). While the RFQ did not identify specific salient characteristics for the Nutanix products, the PWS included a specific section identifying the salient characteristics for categories of different products. PWS at 10-12 (Section C.6). For example, under the "Hypervisor & Virtualization Support" category, the PWS specified that the replacement platform must support all major hypervisors, including Microsoft Hyper-V, and provide a single, unified management interface capable of managing environments with multiple hypervisors. *Id.* at 10.

Prior to the February 13, 2026, close of the solicitation period, FCN filed the underlying protest with our Office. The firm argued that the RFQ's terms were unreasonable because (1) the terms unduly restrict competition, and (2) the terms create a *de facto* sole source procurement. Protest at 8-11.

When alleging that the terms unduly restrict competition, FCN asserted that Broadcom's VCF 9.0 virtualization platform could satisfy the agency's needs because it offered advantages over the Nutanix platform. Protest at 8. FCN also asserted that the Broadcom VCF 9.0 virtualization platform can meet the agency's minimum functional requirements. *Id.* at 8-9. Despite this alleged capability, FCN argued that the RFQ unreasonably restricted vendors to quoting only the Nutanix platform because the RFQ identified Nutanix products on the BOM (including NTX-HCI-BNDL and NTX-8170-G9). *Id.* at 9. FCN also argued that the identified salient characteristics reflect Nutanix's proprietary capabilities rather than reflect the agency's minimum needs. *Id.*

As for its other allegation, FCN asserted that the RFQ's terms created a *de facto* sole source procurement because a vendor not proposing the Nutanix platform will not have its quotation fairly considered. RFQ at 10. FCN argued that the RFQ's salient characteristics are "drafted in a way that no platform other than Nutanix can meet the

Agency's stated requirements without customization or development." *Id.* FCN further argued that the agency lacks any reasonable rationale supporting the inclusion of the identified salient characteristics. *Id.*

In its report, the IRS responded to the protest allegations. First, the IRS explained that the RFQ's terms reflected its legitimate needs. Memorandum of Law (MOL) at 5-10. For example, the agency explained that it requires management software to perform various functions, such as virtualization functionality and lifecycle management, and that the Nutanix bundle (NTX-HCI-BNDL) includes software that serves such purposes. *Id.* at 8-9. Additionally, the IRS explained that it requires nodes for a more streamlined, efficient shared cloud environment, as opposed to using disk-based storage, and that the Nutanix node (NTX-8710-G9) represents this function. *Id.* at 6.

Second, the IRS explained that the RFQ does not specifically require the use of Nutanix products. MOL at 10-12. It explained that the references to Nutanix products does not create a requirement to provide them; rather, the RFQ plainly provided that competitors could provide "brand name or equal" products. *Id.* at 11. It also explained that such references are useful for vendors to determine hardware specifications, and that other manufacturers (e.g., Dell and Cisco) produce equivalent products. *Id.* at 12.

FCN responded with multiple arguments. First, FCN argued that the agency explains that the agency's minimum needs encompassed a platform with increased resiliency and lower operational costs, and that the RFQ was anti-competitive because it failed to recognize that its version of VMware could satisfy those needs. Comments at 2-4. Next, FCN argued that the agency failed to demonstrate that the allegedly restrictive specifications are related to its minimum needs. See *id.* at 5-10. In so arguing, FCN complained that the RFQ was ambiguous as to what constituted an "equal" product since the RFQ did not provide "performance specifications" or salient characteristics for the Nutanix bundle or node. *Id.* at 5-6. Finally, FCN argued that the allegedly restrictive specifications are not supported by any market research. *Id.* at 10-11.

On May 13, we issued our decision denying the protest. *FCN, Inc., supra*. First, we concluded that the record demonstrated that the allegedly restrictive specifications were reasonably necessary to meet the agency's needs. *Id.* at 4-6. For example, the agency demonstrated that the requirement for a single, shared storage pool would increase storage without requiring costly physical computing upgrades. *Id.* at 4.

Second, we rejected FCN's assertion that the agency conducted a *de facto* sole-source procurement. *FCN, Inc., supra* at 6-7. We explained that that the RFQ clearly stated that vendors' proposed solutions may contain either the identified Nutanix or "equal" products, and that the RFQ did not preclude consideration of a product manufactured by another company. *Id.* at 7.

We also noted that, to the extent FCN complained that the solicitation failed to provide sufficient information connecting the RFQ's stated salient characteristics to each of the Nutanix products, such allegation was untimely because it challenged patently

ambiguous terms and was not raised prior to the close of the solicitation period. *FCN, Inc., supra*. We concluded that that this alleged ambiguity was apparent on the face of the solicitation because “nothing in the solicitation connects any of the [PWS] characteristics to the specific Nutanix products [listed on the Hardware and Software List].” *Id.*

On May 20, FCN filed this request for reconsideration.

DISCUSSION

FCN argues that our Office erroneously dismissed as untimely its allegation that the RFQ unreasonably failed to provide salient characteristics for certain Nutanix products. Req. for Recon. at 1, 3. FCN points out that its protest alleged that the RFQ unreasonably provided three Nutanix model numbers “rather than technical specifications.” *Id.* at 3 (quoting Protest at 7). In this regard, FCN argues that an initial protest allegation “does not have to set forth every potential aspect of the protest” and that our Regulations “do not prohibit a protester from expounding the initial protest statement in its comments.” *Id.* at 3-4. Further, FCN contends that it raised the allegation squarely because the agency responded directly in its report. *Id.* at 4-5.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must set out the factual and legal grounds upon which reversal or modification of the decision is deemed warranted, specifying any errors made or information not previously considered. 4 C.F.R. § 21.14(c).

After reviewing the request and the underlying record, we do not find that our decision contained any error in determining that FCN’s allegation was untimely. Our Regulations require “a detailed statement of the legal and factual grounds of protest,” and such statement must “apprise the procuring agency of the specific aspects of the procurement to which the protester objects.” *Manus Medical LLC, B-412331, Jan. 21, 2016, at 6-7.*

Here, our review confirms that FCN did not specifically allege that the RFQ was ambiguous for failing to include salient characteristics, such that the allegation should have been considered timely. As noted above, FCN alleged that (1) the RFQ was unduly restrictive of competition because it did not identify the agency’s functional needs but rather identified the technical characteristics of Nutanix products, and (2) the RFQ created a *de facto* sole-source procurement because the RFQ was drafted with salient characteristics that no platform other than Nutanix can meet. See Protest at 5-11. FCN did not argue that the RFQ was ambiguous because it lacked salient characteristics; rather, the gravamen of the protest was that “the Solicitation is crafted in a way that only a quote for Nutanix will have a chance at award, from specifically requesting Nutanix components by name, to listing salient characteristics that reflect Nutanix’s proprietary capabilities but are not necessary to meet the Agency’s needs for a modernized virtualization platform.” *Id.* at 1.

Although FCN referenced that the RFQ's bill of materials listed several Nutanix products by model number only, this reference arose as part of its argument that the agency sought quotes with Nutanix products only. See Protest at 7. In fact, FCN argued that the bill of materials lacked technical specifications for Nutanix products because the agency allegedly sought to restrict vendors to those products. See *id.* In other words, FCN never raised a specific, standalone challenge that the failure to provide salient characteristics for the Nutanix products rendered the RFQ ambiguous. Thus, we deny the request because our review confirms that the protester did not raise the challenge as part of its initial protest filing and, as a result, our decision did not contain any error in dismissing the allegation as untimely.

To the extent FCN argues that the agency understood the allegation as challenging the ambiguity of the solicitation and responded directly in the report, we disagree. The agency's memorandum explained that it was responding to the allegations that the RFQ was unduly restrictive of competition and that the RFQ created a *de facto* sole source procurement. MOL at 3. Furthermore, the agency explained that the RFQ did not attempt to "steer the award to a Nutanix solution," but rather it included Nutanix products by model number in order to provide examples of products satisfying the salient characteristics set forth in the PWS. *Id.* at 8 (citing PWS at 5). The agency never responded to an alleged protest ground that the RFQ was ambiguous, and thus, we see no basis to agree with FCN that the agency's memorandum provides evidence that the allegation was raised.

Finally, we disagree with FCN's view that a protester raises every conceivable allegation to a particular term so long as it referenced the allegedly deficient term in its initial filing and then may provide a more developed argument as part of its comments. To the contrary, this argument plainly conflicts with our Regulations requiring protesters to raise detailed statements of their protest allegations and to file any allegations challenging the terms of a solicitation prior to the deadline set for receipt of initial quotations because it would allow a protester to raise new allegations as part of its comments. See 4 C.F.R. §§ 21.1(a)4, 21.2(a)(1). Indeed, such a pleading standard would effectively allow a protester to raise new, untimely challenges as part of its comments, which would yield undue administrative burdens for the agency and for our Office. Since our statutory mandate is to provide for the "inexpensive and expeditious resolution of protests," we are unpersuaded by the protester's position. 31 U.S.C. § 3554(a)(1).

The request is denied.

Edda Emmanuelli Perez
General Counsel