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Decision

Matter of: SLS Federal Services, LLC

File: B-424472; B-424472.2

Date: July 23, 2026

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DIGEST

1. Protest challenging the issuance of a task order based on consideration of a single vendor is dismissed as untimely where the agency issued the task order solicitation for to a single vendor pursuant to the terms of the overarching indefinite-delivery, indefinite-quantity contracts.

2. Protest alleging that issuance of a task order was inconsistent with the terms of the solicitation is dismissed where the protester is not an interested party to raise such challenges.

DECISION

SLS Federal Services, LLC, of Galveston, Texas, protests the issuance of a task order to Barnard Construction Company, Incorporated, of Bozeman, Montana, by the Department of Homeland Security, U.S. Customs and Border Protection (CBP), for a secondary vertical barrier design build construction project. The protester contends that the agency improperly issued the task order after considering only Barnard for proposal and award, and that CBP failed to adhere to the terms and conditions of the task order solicitation.

We dismiss the protest.

BACKGROUND

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, directs the Secretary of Homeland Security to “take such actions as may be necessary to install additional physical barriers and roads . . . in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.” Pub. L. 104-208, 110 Stat. 3009-546 (1996), *amended by* Pub. L. 109-13, 119 Stat. 306 (2005); Pub. L. 109-367, 120 Stat. 2638 (2006); Pub. L. 110-161, 121 Stat. 2090 (2007) (codified at 8 U.S.C. § 1103 note) (hereinafter “IIRIRA”). To support the execution of that directive, the IIRIRA further provides that “[n]otwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive all legal requirements such Secretary, in such Secretary’s sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section[.]” *Id.* § 102(c)(1). As specified in the IIRIRA, “[a]ny such decision by the Secretary shall be effective upon being published in the Federal Register.” *Id.*

The Secretary of Homeland Security published nine determinations pursuant to section 102 of the IIRIRA in the Federal Register on October 15, 2025. See 90 Fed. Reg. 48281-92 (Oct. 15, 2025). Relevant here, one such determination was that the United States Border Patrol El Paso Sector,¹ “which is in the vicinity of the United States border and located in the states of New Mexico and Texas, is an area of high illegal entry.” *Id.* at 48289. In this context, the Secretary stated, “[i]n order to ensure the expeditious construction of the barriers and roads in the El Paso Sector, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(a) of the IIRIRA.” *Id.* Accordingly, the Secretary waived various statutes and regulations:

[W]ith respect to all contracting actions necessary for the construction of physical barriers and roads (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the El Paso Sector.

Id.

Specifically, the Secretary waived “all of the following statutes and regulations, including any legal requirements of, deriving from, or related to the subject of,” the following statutes and regulations:

¹ The El Paso Sector covers the entire state of New Mexico and the two western most counties in Texas, Hudspeth and El Paso. See <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/el-paso-sector-texas> (last visited July 14, 2026).

[T]he Administrative Procedure Act (5 U.S.C. 551, *et seq.*); 15 U.S.C. 631(j); 15 U.S.C. 637(d)-(f), and (h)-(k); 15 U.S.C. 644; 15 U.S.C. 657q; 28 U.S.C. 1491(b) (to the extent that it authorizes injunctive relief or any form thereof that would interfere with the expeditious construction of barriers and roads); 31 U.S.C. 3553(c) and (d)(3); 40 U.S.C. 1101 *et seq.*; 41 U.S.C. 1126; 41 U.S.C. 1708(a), (c), (e)-(g); 41 U.S.C. 1901(c), (d), and (e); 41 U.S.C. 3301; 41 U.S.C. 3302(b)-(e); 41 U.S.C. 3304; 41 U.S.C. 3306(a)-(c); 41 U.S.C. 3307(b)-(d), (e)(4), and (e)(5)(C); 41 U.S.C. 3309; 41 U.S.C. 3502; Section 880 of Division A, Title VIII of Public Law 115-232 (41 U.S.C. 3701, Note); 41 U.S.C. 4103(c), (d)(3)-(4); 41 U.S.C. 4104(b); 41 U.S.C. 4105(c)-(d), (f)(2)-(3), (g); 41 U.S.C. 4106(c)-(d); 41 U.S.C. 6101(b)(1); 13 CFR part 125, and 127.503(g); 48 CFR 7.102; 48 CFR part 10; 48 CFR 16.504(c); 48 CFR 16.505(a)(4), (a)(8)(i) and (iii), (a)(9), and (b); 48 CFR 17.207; 48 CFR 22.404-5; 48 CFR subpart 22.5; 48 CFR 28.102-1(c); 48 CFR 33.103(f).

Id.

Relevant to the issues presented here, 41 U.S.C. § 4106(c), which is listed in the waiver, generally requires that all contractors awarded a multiple-award, indefinite delivery, indefinite quantity (IDIQ) contract “shall be provided a fair opportunity to be considered . . . for each task or delivery order in excess of” the micro-purchase threshold of \$15,000, and (d) further provides for enhanced competition among multiple-award IDIQ contract holders for orders valued in excess of \$5 million.

On October 24, after publication of the waiver, the agency contacted several firms via email regarding the prospective award of a multiple-award, IDIQ contract for border infrastructure and technology along the southern border. *BCCG JV*, B-424377, June 22, 2026, at 3 (discussing a different award under the IDIQ contracts). The agency did not request proposals regarding the IDIQ contract to be awarded; rather, it directed the recipient firms to “review the attached proposed IDIQ contract carefully[.]” complete the relevant portions of the Standard Form (SF) 1442, and return it to the agency no later than October 27. *Id.*

On October 31, CBP awarded multiple-award IDIQ contracts to eleven firms that completed and returned the SF 1442, including SLS and Barnard. Req. for Dismissal at 2.² The IDIQ contracts stated that the agency was issuing the contracts “in accordance with the waiver[s]” the agency had published in the Federal Register on October 15. Protest, exh. 3, SLS IDIQ Contract at 2; Req. for Dismissal, attach. 2, Barnard IDIQ Contract at 1. With respect to ordering procedures, the IDIQ contracts specified that “the Government may . . . issue a Request for Proposals (RFP) to some

² Citations to the record refer to the documents' internal Adobe PDF pagination.

or all Contractors under the IDIQ contract.” Protest, exh. 3, SLS IDIQ Contract at 13. It further stated that fair opportunity procedures for the issuance of orders were not required, citing the October 15 waivers published in the Federal Register. *Id.*

On March 24, 2026, CBP issued the solicitation at issue here, for a secondary vertical barrier design build construction project in the El Paso Sector (EPT-5), by emailing it only to Barnard. Req. for Dismissal at 2-3; Req. for Dismissal, attach. 3, Email to Barnard, Mar. 24, 2026, at 1. Although CBP did not send the solicitation to SLS, the protester obtained a copy.³ Req. for Dismissal at 3 (“Although CBP does not know how, SLS received a copy of the March 24, 2026 Solicitation.”). On March 26, SLS emailed the agency to document various “concerns” about orders under the IDIQ contracts SLS had expressed on a call with the agency that day, including SLS’s “understand[ing] the government [was] considering a sole source award” to Barnard for EPT-5. See Protest, exh. 5, Emails from SLS to CBP ending Mar. 26, 2026, at 2. On April 4, SLS followed up with the agency, “respectfully request[ing] to be included in this project solicitation” and affirming that the company was prepared to attend the site visit and submit a proposal. Protest, exh. 7, Emails from SLS to CBP ending Apr. 8, 2026, at 2-3. In the protester’s own words, the agency “declined to respond to SLS’s offer to appear at the site visit,” and “SLS also never heard back from CBP regarding SLS’s intention to meet the deadline to submit a proposal in response to the Solicitation.” Protest at 4. In the interim, CBP issued two amendments to the RFP, again emailing them only to Barnard on April 7 and April 13. Req. for Dismissal at 2-3.

On April 13, while continuing to urge CBP not to issue the task order “as a sole source award” to Barnard, SLS submitted an unsolicited proposal for the EPT-5 work. Protest at 4; Protest, exh. 9, April 13 Letter from SLS to CBP at 2. Following the submission of its unsolicited proposal, SLS sent an email to the contracting officer on April 18, “propos[ing] a ‘win-win’ solution” of “splitting” the task order, with half of the work awarded to Barnard and half to SLS. Protest, exh. 6, Emails from SLS to CBP ending Apr. 18, 2026, at 2.

On April 24, CBP issued the task order to Barnard at a value of \$1,585,324,926. Protest at 5. This protest followed on May 4.

DISCUSSION

The protester contends that the issuance of the EPT-5 task order to Barnard is an improper sole-source award that is unjustified and violates restrictions against conflicts of interest. Protest at 13-16; Supp. Protest at 3-4. SLS further argues that the agency’s actions were inconsistent with the terms and conditions of the task order solicitation. Protest at 5-11; Supp. Protest at 2-3.

³ The protester does not indicate how it obtained a copy of the task order solicitation, and it not relevant to our decision to dismiss the protest.

The agency and intervenor request dismissal of the protest on several grounds. First, the agency contends that SLS's protest "is predicated on its disagreement with the Agency's decision to sole source" this work to Barnard and is therefore an untimely challenge to the terms and conditions of the IDIQ contracts, which specify that competition requirements do not apply. Req. for Dismissal at 5-6; see *also* Intervenor Resp. to Req. for Dismissal at 3-7. The agency further argues that the protester is not an interested party to protest the award because CBP issued the solicitation only to Barnard. Req. for Dismissal at 6-8; see *also* Intervenor Resp. to Req. for Dismissal at 7-11. The agency also contends that the protest fails to state a factually and legally sufficient basis for protest. Req. for Dismissal at 8-11. For the reasons stated below, we dismiss the protest.

Issuance of the Task Order Solicitation to a Single Vendor

As discussed above, on October 15, 2025, the Secretary of Homeland Security published waivers of various statutes and regulations in the Federal Register, citing the authority provided by the IIRIRA. 90 Fed. Reg. 48281-92 (Oct. 15, 2025). The IDIQ contracts awarded thereafter to the protester, awardee, and other firms, expressly stated that the agency was issuing their contracts in accordance with the October 15 waivers. Protest, exh. 3, SLS IDIQ Contract at 2; Req. for Dismissal, attach. 2, Barnard IDIQ Contract at 1. The ordering provisions of the IDIQ contracts specified that "the Government may . . . issue a Request for Proposals (RFP) to some or all Contractors under the IDIQ contract," and that fair opportunity procedures for the issuance of orders were not required under the IDIQ contract, citing the October 15 waivers, which waived, *inter alia*, the fair opportunity and enhanced competition requirements for orders under multiple-award contracts set forth in 41 U.S.C. § 4106(c) and (d) and section 16.505(b) of the Federal Acquisition Regulation. Protest, exh. 3, SLS IDIQ Contract at 13.

Subsequent to the award of the IDIQ contracts and again citing to the October 15 waivers, CPB issued the EPT-5 task order RFP, but only to Barnard. Req. for Dismissal at 2-3; Req. for Dismissal, attach. 3, Email to Barnard, Mar. 24, 2026, at 1. The solicitation included, among other things, the statement of work and instructions for the preparation and submission of proposals. Protest, exh. 4, RFP at 7-10, 16-22. Relevant here, although the RFP advised that award would be made on a best-value tradeoff basis, considering price and technical factors, the solicitation also specified that "[t]he use of this fair opportunity process does not obligate the government to determine a competitive range, conduct exchanges with any Contractors, solicit proposals, or revisions thereto." *Id.* at 10. After receiving Barnard's proposal, the agency issued the task order to the firm on April 24. Protest at 5.

The protester challenges the agency's decision to issue the solicitation to only Barnard, despite the protester's direct request to be considered under the solicitation and even after the fact that SLS had submitted an--albeit, unsolicited--proposal responding to the RFP. According to the protester, the agency's decision was improper because CBP has offered "conflicting and shifting rationales" for limiting the agency's consideration to a single vendor, Barnard. Protest at 11-13. In addition, SLS argues the agency's

decision created “the appearance of a conflict of interest if not outright preferential treatment” favoring the awardee. *Id.* at 13-16; Supp. Protest at 3-4.

The agency requests that SLS’s challenge to the agency’s decision to proceed with a “sole source” in this manner as untimely, arguing that “SLS knew at the time it was solicited for the IDIQ in October 2025 that it may not be invited to propose on IDIQ task order solicitations and that competition was not required at the task order level.” Req. for Dismissal at 5. SLS responds that the agency is mischaracterizing the firm’s protest. According to the protester, “SLS is not challenging the IDIQ [contracts], the Waiver, or CBP’s authority to sole-source task orders under the IDIQ [contracts],” and that “[q]uite simply, SLS protests the fact that CBP did not follow the competitive requirements it included in the [EPT-5 task order] Solicitation.” Resp. to Req. for Dismissal at 5. In the protester’s view, because the task order RFP “include[d] competitive requirements,” CBP was obligated to issue the solicitation and open the opportunity to all IDIQ contract holders, or at least those, like SLS, that specifically requested it.⁴ *Id.* SLS asserts that its protest is properly understood as a timely challenge to the agency’s decision “not to consider SLS’s proposal pursuant to the Solicitation.” *Id.* at 4.

The protester’s argument, however, is undercut by the plain language of the awarded IDIQ contracts, of which SLS and Barnard are holders. Here, the terms of the IDIQ contract expressly state that (1) the contract was being awarded pursuant to the IIRIRA’s waiver provision; (2) fair opportunity requirements did not apply to orders under the contract pursuant to the waiver; and (3) that the agency “may” issue any RFP under the IDIQ contracts “to some or all” contract holders. Protest, exh. 3, SLS IDIQ Contract at 13. As the protester, itself, concedes, this language within the IDIQ contracts allows CBP to limit competition, acknowledging that the agency has the “ability to issue sole source procurements,” because the “IDIQ [contracts] provides CBP this option.” Resp. to Req. for Dismissal at 5. Even assuming for the sake of argument that the task order solicitation here set forth requirements for fair opportunity procedures to compete for the task order, the terms of the IDIQ meant that the agency retained the discretion to limit that competition to some or all contract holders. The agency’s election to issue the task order RFP to Barnard only--and decision to not consider other IDIQ contract holders such as SLS--is therefore entirely consistent with the terms of the IDIQ contracts.

To the extent that the protester now objects to the terms of the IDIQ contract that allow for limitations on task order competitions, such objection is unquestionably untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying

⁴ According to SLS, because the RFP used pluralized terms such as “proposals” and “offerors” throughout, as well as the phrase “fair opportunity process” in reference to the best-value tradeoff basis for award, the task order solicitation had “competitive requirements,” meaning it contemplated competition. Protest at 7-8; Supp. Protest at 2-3.

the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, at 3-4. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1); see *AmaTerra Env't Inc.*, B-408290.2, Oct. 23, 2013, at 3-4. Under the circumstances here--where the challenge is not raised until months after the agency first shared the terms of the proposed IDIQ contracts, and the protester affirmatively reviewed and executed the IDIQ contract--the allegation is patently untimely, and we dismiss it, accordingly. *Black & Veatch Special Project Corp.*, B-417166, Mar. 5, 2019, at 3-5 (dismissing, as untimely, challenge that agency violated fair opportunity procedures by issuing task order to woman-owned small business without competition where IDIQ contract unambiguously permitted such direct task order awards to small businesses as exception to fair opportunity process).

Finally, by its own admission, the protester does not challenge the terms of the task order solicitation in the traditional sense; for example, alleging that the terms are beyond the scope of, or inconsistent with, the IDIQ contract. Resp. to Req. for Dismissal at 2 (asserting that "SLS's challenges to CBP's non-competitive actions all stem from [CBP's] departures from the plain terms of that [EPT-5] Solicitation, not from the IDIQ" contracts). Thus, we need not address the timeliness of such challenges to the task order solicitation. Instead, SLS insists that the crux of its protest is that the agency "departed" from the terms of the EPT-5 task order solicitation when CBP failed to allow for the submission (and consideration) of multiple competitive proposals. Protest at 5-9. We address this argument below.

Failure to Adhere to the Task Order Solicitation

The protester alleges that CBP failed to adhere to the terms of the EPT-5 task order solicitation in the evaluation and award. SLS argues that CBP ignored the terms of the task solicitation, which, in SLS's view, provided for "competition and submissions by multiple offerors." Protest at 5-9; Supp. Protest at 2-3. In addition, the protester contends that the agency did not conduct a price reasonableness analysis or document a reasonable best-value tradeoff award decision. Protest at 9-11. The agency avers that the protester "is not an interested party to challenge the award on any basis," including any alleged inconsistency between the RFP's terms and the agency's evaluation. Req. for Dismissal at 6-8.

Under the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. Our regulations implementing CICA define an interested party as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a protester is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the protester's status in relation to the procurement. *Criterion Sys., Inc.*,

B-419749 *et al.*, July 21, 2021, at 5. A protester is not an interested party if it would not be in line for contract award were its protest to be sustained. *Id.*

According to the protester, it is an interested party to challenge the agency's failure to adhere to the terms of the solicitation "because it is undisputed that SLS submitted a proposal, CBP considered that proposal, and the Solicitation contained fair opportunity language." Resp. to Req. for Dismissal at 6. At the same, SLS also admits--and the record reflects--that CBP did not issue the RFP to SLS, and that the protester submitted the proposal on its own volition, unsolicited by the agency, while continuing to try to persuade the agency to open up the task order solicitation competition beyond Barnard. Protest at 4; Protest, exh. 9, April 13 Letter from SLS to CBP.

Central to the protester's contention that it is an interested party is an email the contracting officer sent to SLS on April 24, stating, "We considered your proposal but decided to move forward with the sole source awardee to awardee." Protest, exh. 11, Email from CBP to SLS, Apr. 24, 2026, at 2. According to the protester, the email demonstrates that SLS is an actual offeror of a proposal that was considered by the agency. Resp. to Req. for Dismissal at 6.

Here, the record reflects that CBP neither invited SLS to compete under the task order solicitation, nor did the agency acquiesce or give SLS permission to submit a proposal when the firm requested to do so on April 4. See Protest, exh. 7, Emails from SLS to CBP ending Apr. 8, 2026. Moreover, the protester has acknowledged that, under the terms of the IDIQ contract, CPB has the authority restrict task order competitions. Resp. to Req. for Dismissal at 5 ("This protest is not about CBP's ability to issue sole source procurements under the IDIQ . . . The IDIQ [contracts] provides CBP this option."). Contrary to the protester's suggestion, the agency's statement that it "considered" SLS's unsolicited proposal does not, by itself, mean that the agency accepted and evaluated that proposal as a response to the RFP. Indeed, the agency similarly advised SLS that the firm's April 18 email proposal of a "win-win" solution of "splitting" the work --was "under review."⁵ Protest, exh. 10, SLS Email to CBP at 2 (referring to Protest, exh. 6, Emails from SLS to CPB ending Apr. 18, 2026, at 2).

Even where a protester holds the IDIQ contract under which a task order is issued, that does not necessarily mean that it is an actual or prospective offeror for any task order award. See *Black & Veatch Special Project Corp.*, *supra*, at 5 (finding protester was not interested party to challenge issuance of task order under small business exception to fair opportunity requirements where protester was not small business). Nor does a

⁵ When read in context of the email correspondence between the agency and SLS, it is apparent that the use of the words "consider" and "under review" are more reflective of an acknowledgement or a courtesy by the agency in regard to the protester's unsolicited proposals. Regardless, even if SLS's unsolicited proposals had been evaluated, this does not change the analysis of whether SLS is an interested party to protest, as discussed below.

protester's voluntary submission of an unsolicited proposal automatically render the protester an interested party to challenge the agency's pursuit of an award through a solicitation. *Sales Res. Consultants, Inc.*, B-284943, B-284943.2, June 9, 2000, at 5 (finding protester's unsolicited offer to supply agency with software did not make it an interested party to challenge agency's procurement through Federal Supply Schedule solicitation). By SLS's logic, a firm can become an interested party to protest simply by submitting an unsolicited proposal responding to a restricted solicitation under which the firm was not invited to compete. As the protester has provided no credible authority to support such a conclusion, we decline to follow SLS's invitation under these circumstances.

Given the unique nature of the IDIQ contracts here, awarded under the waiver authority of the IIRIRA, SLS cannot establish that it is an actual or prospective vendor under the EPT-5 task order solicitation. As the agency points out:

To emphasize this point further, the Agency could simply amend the Solicitation to remove the Fair Opportunity language and continue with the sole source award, or alternatively, compete the Task Order, but not invite SLS to the competition. Neither scenario places SLS any closer to participation in a competition or award, demonstrating that any potential economic interest of SLS in this procurement is remote and purely hypothetical.

Req. for Dismissal at 7 (citing *Intellectix Corp.*, B-420552 *et al.*, May 27, 2022, at 5) (finding the protester's economic interests "too remote for the firm to be considered an interested party to challenge" the award where the protester would not be in the pool of competitors). We agree. Because SLS was not an actual or prospective vendor under the solicitation, it is not an interested party to protest to enforce the terms of the solicitation.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel