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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

**DOCUMENT FOR PUBLIC RELEASE**

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## Decision

**Matter of:** Starry Associates, Inc.

**File:** B-410968.3

**Date:** December 23, 2015

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Lars E. Anderson, Esq., James Y. Boland, Esq., and Nathaniel S. Canfield, Esq., Venable LLP, for the protester.

Brian E. Hildebrandt, Esq., and Christian P. Maimone, Esq., Department of Health and Human Services, for the agency.

Young S. Lee, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that agency improperly cancelled the solicitation is denied where the agency reasonably determined that the solicitation did not meet its needs and reissuing a revised solicitation would promote competition.

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### **DECISION**

Starry Associates, Inc., a small business, of Annapolis, Maryland, protests the cancellation of request for quotations (RFQ) No. 15-233-SOL-00023 issued by the Department of Health and Human Services (HHS), for information technology (IT) business operations support services. Starry argues that the agency's cancellation lacks a reasonable basis and was a pretext to avoid implementing a prior decision by our Office, which the protester alleges would have resulted in an award to Starry.

We deny the protest.

### **BACKGROUND**

The solicitation was posted to the General Services Administration's (GSA) e-Buy portal on November 13, 2014. Contracting Officer (CO) Statement (B-410968.2) at 1.<sup>1</sup> The RFQ was issued in accordance with Federal Acquisition Regulation

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<sup>1</sup> Documents filed in response to Starry's prior protest, which was sustained by our Office, are cited to in the current decision by B-number. HHS generally used a  
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(FAR) subpart 8.4 procedures, and was set-aside exclusively for small businesses. RFQ at 0010, 0012. Only qualified small business vendors holding contracts under GSA schedule 70 special item number (SIN) 132-51 (IT Professional Services) were permitted to submit a quotation in response to the RFQ. Id. at 0041. The RFQ contemplated the issuance of a labor-hour task order with a 1-year base period and four 1-year options. Id. at 0010. The solicitation notified vendors that the resulting task order would be issued on a lowest-priced, technically acceptable (LPTA) basis with technical acceptability being one of three non-price evaluation factors.<sup>2</sup> RFQ amend. 002 at 0132.

The intended goal of the solicitation was to deliver business operations support to HHS's program support center (PSC) and its customer agencies related to HHS's unified financial management system (UFMS).<sup>3</sup> Id. at 0097-0099. The support included standardizing, improving, and maintaining the functionality of UFMS, and required personnel familiar with Oracle Federal Financial--the foundation for UFMS--to assist the agency in incorporating UFMS into HHS's business processes.<sup>4</sup> Id. at 0097-0101. The RFQ's performance work statement (PWS) contained seven tasks related to both UFMS and Oracle Federal Financials. Id. at 0101-0104.

As relevant to this protest, the solicitation also referenced support for two proprietary software systems: the Managing Accounting and Credit Card System (MACCS) interface and GovNet-NG. Id. at 0098-0100, 0105. The RFQ expressly noted that these software systems were "product[s] of Starry Associates." Id. at 0098. The solicitation described MACCS as a product that allows agencies to manage, record, and account for all credit card purchases made by agency personnel. Id. Although the solicitation did not specifically enumerate requirements for MACCS in the work to be performed by a vendor, the solicitation required vendors to propose personnel having "prior experience with the MACCS interface" and who would be "able to quickly troubleshoot interface issues." Id. at 0098, 0105;

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Bates numbering system in preparing the agency reports filed in response to B-410968.2 and B-410968.3; where applicable, citations in this decision use the Bates numbers assigned by the agency.

<sup>2</sup> The other two non-price evaluation factors were past performance and section 508 compliance. RFQ amend. 002 at 0132.

<sup>3</sup> UFMS was identified by the RFQ as a stand-alone financial software system with the capability to allow HHS to consolidate financial reporting for multiple agencies within HHS.

<sup>4</sup> Oracle Federal Financials is a commercial, off-the-shelf, software package. RFQ at 0097.

RFQ amend. 002, at 0105, 0132. In order to be evaluated as technically acceptable, a vendor had to meet the requirements identified in the RFQ's PWS, including proposing personnel with MACCS experience. RFQ amend. 002 at 0105, 0132.<sup>5</sup>

In response to the RFQ, the agency received quotations from three vendors, including Starry and Intellizant, LLC. CO Statement at 2. After evaluating Intellizant's quotation as being the lowest-priced, technically acceptable quotation, HHS issued the task order to Intellizant on December 18. Id. Starry filed a protest with our Office on December 29. Id. In response to the first protest, HHS took corrective action, which consisted of a reevaluation of the quotations.<sup>6</sup> Id.

The agency reaffirmed its decision to issue the task order to Intellizant on April 30, 2015. Id. Starry filed its second protest on May 4, alleging that HHS unreasonably evaluated Intellizant's quotation and that the agency's award decision was the result of improper influence and bias. Protest (B-410968.2) at 1-15. On August 11, our Office issued a decision sustaining Starry's protest in part and denying it in part. Starry Associates, Inc., B-410968.2, Aug. 11, 2015, 2015 CPD ¶ 253 at 1-13. In that decision, we made the following recommendation:

We recommend that HHS evaluate Intellizant's quotation in accordance with the stated RFQ evaluation criteria to determine whether the individuals proposed by the vendor have the experience and qualifications necessary to perform the RFQ's PWS tasks and to evaluate whether Intellizant has the ability to supply personnel with the qualifications required by the RFQ. We also recommend that the agency adequately document its evaluation. Should HHS conclude that Intellizant's quotation is unacceptable under the technical acceptability evaluation factor, we recommend the agency terminate the order issued to Intellizant, and evaluate the next lowest-priced quotation to determine whether it is in line for award.

Id. at 12-13. On September 8, the agency provided the following statement to our Office:

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<sup>5</sup> The RFQ described GovNet-NG as a data and report repository to allow agencies to access and download agency operating reports. Id. at 0098-0099; AR, Tab 2c, Accounting Services Director Statement, at 0006. HHS is in the process of phasing out the GovNet-NG reporting tool. Agency Report (AR), Tab 2a, Head of Contracting Activity (HCA) Statement, at 0002.

<sup>6</sup> Based on the agency's corrective action, our Office dismissed Starry's protest as academic. Starry Associates, Inc., B-410968, Jan. 7, 2015 (unpublished decision).

The Agency thoroughly reviewed GAO's opinion in the above captioned matter and began making preparations to re-evaluate the submitted proposals in accordance with the RFP and GAO's recommendations. However, during that preparatory process the agency determined that the instant solicitation does not properly represent its current needs.

Specifically, it has been determined that two of the three systems proposed to be supported under the instant procurement were included in the solicitation by error. That is, both MACCS and GovNet-NG are the subject of separate license agreements with Starry Associates which allow the agency to make use of those proprietary systems. Included in those license agreements are support provisions; and, after review, the agency has determined that it better suits the government's needs to have the contract support and license agreements bundled together, rather than including the support function in a separate multi-faceted support contract.

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As a result, the Agency intends to cancel the instant solicitation, redraft the statement of work to better match its current needs, and re-solicit in Fiscal Year 2016. The Agency intends for the incumbent, Starry Associates, to continue to perform under the predecessor contract until after an award is made under the new solicitation.

AR, Tab 6d, Corrective Action Notice, at 1. Shortly thereafter, Starry filed the instant protest.

## DISCUSSION

Starry contends that it was unreasonable for the agency to cancel the solicitation. The protester alleges that HHS's decision to cancel the RFQ was a pretext to avoid the consequences of our prior recommendation, which demonstrates that the agency is trying to steer the award to Intellizant. In this regard, Starry contends that the agency's rationale for removing the MACCS and GovNet-NG support from the solicitation is not reasonable. The protester also asserts that the cancellation was motivated by undue influence and bias. In response, the agency asserts that it cancelled the solicitation because the requirements no longer represented its needs and because it determined that reissuing a revised solicitation would promote competition.

A contracting agency has broad discretion in deciding whether to cancel a solicitation and need only have a reasonable basis for doing so. See TaxSlayer LLC, B-411101, May 8, 2015, 2015 CPD ¶ 156 at 6. This is true regardless of when

the information first surfaces or should have been known, and even if the solicitation is not cancelled until after proposals have been submitted and evaluated, or discovered during the course of a protest. See VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6; Knight's Armament Co., B-299469, April 7, 2007, 2007 CPD ¶ 85 at 4. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. See MedVet Dev. LLC, B-406530, June 18, 2012, 2012 CPD ¶ 196 at 2-3. A reasonable basis also exists when an agency determines it needs to revise evaluation standards in order to ensure a fair and equal competition. Progressive Servs. Corp., B-404183, B-404251.2, Jan. 11, 2011, 2011 CPD ¶ 18 at 2. In addition, the prospect of increased competition (and the lower prices which often result) generally provides a reasonable basis for an agency to cancel a solicitation. Id.

Where, as here, a protester has alleged that the agency's rationale for cancellation is but a pretext--i.e., that the agency's actual motivation is to avoid awarding a contract on a competitive basis or to avoid resolving a protest--we will closely examine the reasonableness of the agency's actions in cancelling the acquisition. See Point Blank Enterprises, Inc. d/b/a Protective Products Enterprises, B-409940.3, Nov. 26, 2014, 2014 CPD ¶ 357 at 4-5. Notwithstanding such closer scrutiny, and even if it can be shown that personal animus or pretext may have supplied at least part of the motivation to cancel the procurement, the reasonableness standard applicable to cancellation of a solicitation remains unchanged. Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 3. Here, we find the agency's cancellation reasonable.

The record provides no evidence that the agency was motivated by a desire to avoid following our recommendation or steering the award to Intellizant. Instead, the record indicates that the agency reasonably determined that the solicitation did not meet its needs. In this regard, the agency concluded that support for Starry's proprietary systems (MACCS and GovNet-NG) should have never been included in the current solicitation and could be obtained through its licensing agreement with Starry. AR, Tab 6a, Emails, at 00175. Moreover, the agency explains that it believed that removal of the proprietary software support, which could be obtained separately and was unnecessarily restrictive, would promote competition. AR, Tab 2a, HCA Statement, at 0002.

While the protester disagrees with the agency's assertion that it can obtain such services under Starry's licensing agreements, the protester has not demonstrated that the agency's explanation in this regard was unreasonable; we will not resolve a dispute involving the interpretation of the parties' licensing agreement. See DNC Parks & Resorts at Yosemite, Inc., B-410998, April 14, 2015, 2015 CPD ¶ 127

at 10.<sup>7</sup> 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. See Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4. Additionally, the agency has expressed a legitimate concern that requirements involving Starry's proprietary software systems may limit competition.<sup>8</sup> The fact that Starry would prefer that the agency make an award under the initial solicitation, presumably to Starry, does not provide a basis to question the cancellation.

Accordingly, we do not view the proffered rationale for the cancellation of the solicitation as merely a pretext by the agency. Further, even if we were to assume that there may have been some personal animus or bias towards Starry on the part of some agency personnel, this does not provide a basis to conclude that the cancellation was improper, where, as here, the cancellation was otherwise reasonably justified. See Dr. Robert J. Telepak, B-247681, June 29, 1992, 92-2 CPD ¶ 4 at 4.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>7</sup> Nonetheless, we agree with the agency that even if the support could not be provided under Starry's licensing agreement, the agency could still enter into a separate contract, outside of UFMS, for these proprietary software systems. AR at 8.

<sup>8</sup> We note that Starry's prior protest asserted, "[i]n fact, it appears that the only way Intellizant could perform these highly-specialized tasks is to hire many of Starry Associates' personnel currently working on the incumbent task order. . . . However, an effort by Intellizant to capture Starry Associates' personnel would likely prove to be difficult given that these personnel are subject to non-compete provisions." Protest (B-410968.2) at 9.