



United States Government Accountability Office  
Washington, DC 20548

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** Social Impact, Inc.

**File:** B-412655.3

**Date:** June 29, 2016

---

Pamela J. Mazza, Esq., Megan C. Connor, Esq., Julia Di Vito, Esq., and Michelle E. Litteken, Esq., Piliero Mazza PLLC, for the protester.

R. René Dupuy, Esq., United States Agency for International Development, for the agency.

Elizabeth Witwer, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest of an agency's cancellation of a solicitation following corrective action in response to a protest is denied where the record demonstrates that the agency reasonably determined that the solicitation no longer accurately reflected its requirements.

---

### DECISION

Social Impact, Inc., of Arlington, Virginia, protests the cancellation of request for proposals (RFP) No. SOL-621-15-000006, issued by the United States Agency for International Development (USAID) for support for the agency's Monitoring, Evaluation, and Learning Program (MELP) in Tanzania. The protester contends that the cancellation was improper.

We deny the protest.

### BACKGROUND

On March 18, 2015, USAID issued the RFP seeking proposals for MELP as part of the implementation of USAID's 2015-2019 Country Development Cooperation Strategy (CDCS).<sup>1</sup> RFP at 1, 13. The MELP contractor would provide continuous,

---

<sup>1</sup> The purpose of MELP is to provide technical and advisory services to the USAID/Tanzania Mission's development objective teams and implementing partners (continued...)

on-the-ground, on-demand and systemic support to the USAID/Tanzania Mission on performance monitoring, data verification, environmental compliance, impact and performance evaluations, research and studies, organizational learning, and knowledge management. RFP at 13; COS at 1. The RFP contemplated a cost-plus-fixed-fee contract with an estimated period of performance of five years with no option years. RFP at 1. The RFP anticipated award on a best-value basis. Id. at 115.

On January 13, 2016, USAID selected Management Systems International, Inc. (MSI), of Arlington, Virginia, for award. Legal Memorandum, Apr. 22, 2016, at 1. On January 19, Social Impact filed a protest arguing that: (1) USAID failed to consider an alleged organizational conflict of interest arising from the acquisition of MSI by another contractor currently performing services for the agency; (2) USAID did not perform a proper cost realism analysis of MSI's proposal; and (3) USAID misevaluated Social Impact's technical approach.

Subsequent to the filing of the initial protest, USAID notified our Office of its intent to take corrective action, which rendered the protest academic. Agency's Notice of Corrective Action (Feb. 5, 2016). We dismissed Social Impact's protest as academic on February 11. Social Impact, Inc., B-412655, Feb. 11, 2016 (unpublished decision).

On February 16, MSI filed a protest objecting to the scope of USAID's proposed corrective action as overly broad and unduly prejudicial to MSI as the awardee. On March 17, USAID notified our Office that it intended to terminate the awarded contract and cancel the RFP. The agency summarized its rationale as follows:

Changes in USAID/Tanzania Mission staffing, and its in-house capacity, as well as changes in Agency experience and best practices vis-à-vis monitoring, evaluation and learning (MEL) activities, dictate that the Mission streamline its MEL activities by moving some of the underlying procurement's related work, such as the learning component, in-house to maximize efficiency and cost-savings.

Agency's Notice of Cancellation (Mar. 17, 2016). We dismissed MSI's protest as academic on March 22. Mgmt. Sys. Int'l, Inc., B-412655.2, Mar. 22, 2016 (unpublished decision). On March 28, Social Impact filed the instant protest challenging USAID's decision to cancel the solicitation.

---

(...continued)

in the areas of project monitoring, evaluation, research, organizational learning, and knowledge management. Contracting Officer's Statement (COS) at 1.

## DECISION

Social Impact argues that the agency's decision to cancel the solicitation is unreasonable. In this regard, Social Impact contends that USAID's decision to cancel the solicitation is inconsistent with Federal Acquisition Regulation (FAR) § 15.206(e) because any alleged reductions in the scope of work are minimal and could have been effectuated through an amendment to the solicitation. Social Impact also alleges that the agency's decision to cancel is a pretext to avoid implementing corrective action in response to the prior protests. The agency responds that cancellation of the solicitation was reasonable because the RFP's scope of work no longer reflected the agency's requirements and was duplicative of work to be performed in-house by government personnel. We find no basis to sustain the protest.<sup>2</sup>

In a negotiated procurement, such as this one, a contracting agency has broad discretion in deciding whether to cancel a solicitation, and need only establish a reasonable basis for doing so. SupplyCore Inc., B-411015.8, May 27, 2016, 2016 CPD ¶ \_\_ at 3. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. Am. Sys. Corp., B-412501.2, B-412501.3, Mar. 18, 2016, 2016 CPD ¶ 91 at 6. An agency may cancel a solicitation regardless of when the information precipitating the cancellation first arises, even if it is after proposals have been submitted and evaluated, or even if it is discovered during the course of a protest. SupplyCore Inc., *supra*; Am. Sys. Corp., *supra*.

Where, as here, a protester alleges that the agency's rationale for cancellation is pretextual, that is, 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. VIRE Consulting, Inc., B-408148.2, Nov. 26, 2013, 2013 CPD ¶ 272 at 3. 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. Id.; SupplyCore Inc., *supra*. Here, we find that the agency properly canceled the solicitation where it reasonably determined that the solicitation no longer accurately reflected its requirements. We find no evidence that the cancellation is pretextual.

USAID's rationale for the cancellation is set forth in an action memorandum dated March 16 from the contracting officer to the Acting Mission Director for the USAID/

---

<sup>2</sup> Although our decision does not address all of Social Impact's arguments in detail, we have fully considered each of them and find that none provides a basis to sustain the protest.

Tanzania Mission. Agency Report (AR), Tab 4, Action Memorandum, Mar. 16, 2016. The contracting officer represents that the agency's requirements have changed. Specifically, the Mission intends to reduce the scope of its MELP contract as a result of increased in-house Monitoring and Evaluation (M&E) capacity. Id. at 2-3. The contracting officer explains that, after the solicitation was issued in March 2015, the Mission increased its in-house capacity by adding four new positions: a Lead M&E Advisor position and three new CDCS Integration and Program Cycle Coordinator positions.<sup>3</sup> Id. at 2-3. The contracting officer states that these positions were not contemplated during the design of the solicitation, but rather, reflect the Mission's recent shift to a more internally-focused approach. Id. at 2; Agency Response to GAO Inquiry at 1-2. The contracting officer further explains that, due to the increased in-house capacity, the Mission has already worked on tasks within the solicitation's scope of work. AR, Tab 4, Action Memo., at 2.

As a result of the anticipated reduction in the scope of contractor support for MELP, the contracting officer concludes that the scope of work included in the RFP needs to be changed because it no longer reflects the Mission's actual requirements. Id. at 3. The contracting officer recommends cancellation and, if warranted, the issuance of a new solicitation that more accurately reflects the agency's new requirements. Id. In the action memorandum, the contracting officer concludes that cancellation is "permissible" under FAR § 15.206(e).<sup>4</sup> Id.

We find the agency's stated rationale in canceling the solicitation to be reasonable. Our Office has consistently held that an agency may cancel a solicitation when the

---

<sup>3</sup> The record reflects that, as of the date of the action memorandum, the individuals filling the coordinator positions had not yet begun work. Agency Response to GAO Inquiry, June 20, 2016, at 1-2.

<sup>4</sup> In the action memorandum, the contracting officer provides a second basis to amend the scope of the RFP, namely that the MELP contract is not the most efficient or cost-effective approach to support the Mission's needs. AR, Tab 4, Action Memo., at 3. The contracting officer explains that the Mission "recently researched the experiences, lessons and best practices learned from other Missions when carrying out MEL activities." Id. As a result of this research, the contracting officer concludes that performing some of the functions in-house benefits the Mission by reducing the burden of contract management burden, promoting technical team buy-in, and increasing cost savings. Id. The contracting officer also states that an internal approach is more consistent with USAID policy. Id. Although the agency styles this explanation as an independent basis to cancel the RFP, we do not view it as such. Rather, it appears to be a justification of the benefits of the first basis to cancel, i.e., increased in-house capacity.

agency determines that the solicitation does not accurately reflect its needs. Am. Sys. Corp., *supra*, at 6; SupplyCore Inc., *supra*, at 5; Starry Assocs., Inc., Dec. 23, 2015, 2015 CPD ¶ 401 at 5; AeroSage LLC, B-410648.2, B-410648.3, Mar. 20, 2015, 2015 CPD ¶ 111 at 3; Zegler, LLC, B-410877, B-410983, Mar. 4, 2015, 2015 CPD ¶ 168 at 3. Moreover, we have also previously recognized that avoiding procuring duplicative services may reasonably support a decision to cancel a solicitation. SupplyCore Inc., *supra*, at 4; Brian S. Scott, B-401960, Nov. 9, 2009 CPD ¶ 228 at 3. Here, the agency's determination that the RFP's scope of work should be reduced to reflect the Mission's increased in-house capacity provides a reasonable basis for canceling the solicitation.

Social Impact does not rebut the agency's position that the solicitation no longer represents the agency's needs. Rather, Social Impact argues that USAID's decision to cancel the RFP is unreasonable because FAR § 15.206(e) does not compel cancellation in this case.<sup>5</sup> Protest at 1, 5-7. In this regard, Social Impact contends that the proposed changes are not "so substantial as to exceed what prospective offerors reasonably could have anticipated[.]" Comments at 4 (citing FAR § 15.206(e)). See also Protest at 1, 8. Instead, according to Social Impact, the proposed changes are "minimal and immaterial" and "could have been accomplished through an amendment."<sup>6</sup> Protest at 2, 8. Social Impact also contends that there is no evidence in the record that the agency considered whether "additional sources likely would have submitted offers had the substance of the amendment been known to them." Comments at 5 (citing FAR § 15.206(e)). Accordingly, Social Impact contends that the agency was required to amend, not cancel, the solicitation. Protest at 8.

We concur that the record does not evidence any consideration by the agency of the criteria set forth in section 15.206(e). See generally, COS at 2; AR, Tab 4,

---

<sup>5</sup> This provision of the FAR provides:

If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

FAR § 15.206(e).

<sup>6</sup> Social Impact calculates that the replacement of four full-time equivalents (FTEs) with four government employees represents, at most, a 14 percent reduction in the scope of work. Comments at 5.

Action Memo., at 3; Protest, Exh. 2, Agency Letter to Social Impact, Mar. 17, 2016; Agency Response to GAO Inquiry, June 20, 2016. Although the agency asserts that its cancellation is “in accordance with” and “permissible under” this provision of the FAR, see e.g., Protest, Exh. 2, Agency Letter to Social Impact; AR, Tab 4, Action Memo., at 3, it does not appear that the agency made any determination that the criteria in section 15.206(e) were met or that cancellation was mandatory in this instance. Social Impact, however, provides no legal support for the proposition that cancellation is impermissible in the absence of such criteria.

Section 15.206(e) mandates that an agency cancel a solicitation and issue a new one when an amendment would be “so substantial as to exceed what prospective offerors reasonably could have anticipated[.]” FAR § 15.206(e). See Companion Data Servs., LLC, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ 300 at 11. There is nothing to suggest, however, that the converse is true, i.e., that an agency is prohibited from canceling a solicitation when changes in the agency’s requirements do not rise to the level contemplated in section 15.206(e). To the contrary, our Office has held that, even when the changes could be addressed via amendment, “[t]he only pertinent inquiry [] is whether there existed a reasonable basis to cancel, since an agency may cancel at any time when such a basis is present.” VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 7. Where the record reflects a reasonable basis to cancel, and in the absence of the criteria described in section 15.206(e), the agency has broad discretion in determining whether to cancel or amend a solicitation. Id. (“Since the record here reflects that there was a reasonable basis to cancel the RFP, we do not find that the agency abused its discretion, even though it may have taken a different course by further amending the RFP.”). Accordingly, we find the agency’s decision to cancel the solicitation to be reasonable despite the fact that the anticipated changes to the solicitation might be characterized as minimal.<sup>7</sup>

Next, Social Impact argues that the timing of the cancellation suggests that the agency’s decision to cancel the solicitation is unreasonable and pretextual. Protest at 2, 7; Comments at 1-4. In this respect, Social Impact contends that, even if the addition of four new in-house positions could substantially affect the solicitation’s scope of work, USAID knew “that it would hire four additional personnel months--if not years--ago” and its failure to consider the impact of these four positions on the scope of the MELP contract reflects, at a minimum, an unreasonably “passive approach” to planning the procurement, if not a basis to find the agency’s rationale to be pretextual. Comments at 3-4. Relying upon our recent decision in XTec, Inc., B-410778.3, Oct. 1, 2015, 2015 CPD ¶ 292, Social Impact contends that we should sustain its protest because USAID was aware of the flaws in its solicitation for some

---

<sup>7</sup> We take no position here regarding whether the proposed changes are minimal, as Social Impact contends.

time and failed to adequately plan how it would address those flaws. Comments at 3-4.

In XTec, Inc., our Office found that an agency had a reasonable basis to cancel a solicitation where it determined, after multiple rounds of awards, protests, and corrective action, that the solicitation failed to contain adequately detailed information regarding various contract performance requirements. XTec, Inc., supra, at 9-10. We sustained XTEC's protest challenging the cancellation of the solicitation, and the award of a sole-source contract extension for the incumbent, because the record showed that the procuring agency was aware of, and had documented the need for, more detailed solicitation requirements for nearly four years. Id. at 10-12. Accordingly, our Office's decision sustaining the protest was based on the procuring agency's failure to adequately plan how it would address the flaws in the solicitation that had been known to the agency for years. Id. See also, Am. Sys. Corp., supra, at 10 (summarizing the holding in XTec Inc.).

The circumstances in XTec, Inc., where the procuring agency passively ignored potential defects in the solicitation for almost four years, are materially different than the circumstances here. Here, the record reflects that the information precipitating the cancellation arose after the agency issued the solicitation and was not fully realized until recently. See generally, Agency Response to GAO Inquiry.

The record does not support Social Impact's contention that the USAID/Tanzania Mission knew for some time that it would be approved to hire four in-house personnel or that those individuals would perform tasks encompassed within the solicitation's scope of work. See Comments at 3-4. None of the four in-house positions were filled prior to the issuance of the solicitation.<sup>8</sup> Agency Response to GAO Inquiry at 1-2. Additionally, only the lead advisor position was even contemplated prior to the issuance of the solicitation. Id. at 1. The record does not reflect, however, that the Mission envisioned that the lead advisor would perform tasks encompassed with the RFP's scope of work. Id. at 3. USAID explains that the advisor was initially tasked, among other things, to provide guidance to the Mission regarding how to "best use monitoring and evaluations (M&E) to enable managers to make data-driven decisions for adaptive management." Id. at 2. It was not until months after the lead advisor began work at the Mission (and months after the issuance of the solicitation) that the lead advisor started to perform tasks encompassed within the solicitation. Id. at 3.

---

<sup>8</sup> The lead advisor began work on March 26, 2015, and the CDCS Integration and Program Cycle Coordinators are scheduled to begin work on May 16, August 15, and September 8, 2016, respectively. Agency Response to GAO Inquiry at 1, 2.

The record also reflects that the agency's understanding of its needs evolved significantly after issuance of the RFP. USAID explains that, "[o]ver time, [the lead advisor's] guidance and analysis influenced the Mission to rethink the MELP design and to conclude that the MELP contract was not the most efficient and cost-effective approach to supporting the Mission's monitoring, evaluation and learning (MEL) needs." Id. at 2. USAID also provides a chronology of discussions between the USAID/Tanzania Mission personnel and personnel at other missions regarding "best practices" when performing MEL activities. Id. at 3; AR, Tab 4, Action Memo., at 3. These discussions (all of which occurred after the issuance of the solicitation), in combination with the lead advisor's guidance and the fact that the Mission was approved for three Foreign Service officers to serve as the CDCS Integration and Program Cycle Coordinators, led the Mission to conclude that the MELP contract was not the most efficient or cost-effective approach to meeting the Mission's needs.<sup>9</sup> Agency Response to GAO Inquiry at 3; AR, Tab 4, Action Memo. at 3. Accordingly, during the time period from January through March 2016, which happened to coincide with the protests involving the solicitation, the agency made the decision to cancel the RFP and reduce the scope of the contract in favor of an internally-led MELP effort. Agency Response to GAO Inquiry at 4.

Although Social Impact complains that "the Agency waited until offerors had expended substantial time and resources preparing proposals and filing protests to come to the realization that its needs have changed," Comments at 4, we find no evidence that the agency significantly delayed in canceling the solicitation. Accordingly, the facts presented here are distinct from those in XTec, Inc., where the procuring agency was aware of, and had documented, the flaws in its solicitation for years.

The protest is denied.

Susan A. Poling  
General Counsel

---

<sup>9</sup> The record reflects that the Mission learned it had been approved to receive three Foreign Service officers in December 2015. Agency Response to GAO Inquiry at 3.