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Decision

Matter of: Henry's Aerial Service, Inc.; Evergreen Flying Services, Inc.

File: B-414238.7; B-414238.9

Date: August 10, 2017

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Amy M. Siadak, Esq., Department of Interior, for the agency.
Noah B. Bleicher, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of an agency's cancellation of a solicitation in response to a prior protest is denied where the agency had insufficient time to conduct a reevaluation of proposals before its time-sensitive requirements changed and another procurement vehicle was available to fulfill its needs.

DECISION

Henry's Aerial Service, Inc., a small business of Greenbrier, Arkansas, and Evergreen Flying Services, Inc., a small business of Rayville, Louisiana, protest the cancellation of solicitation No. D16PS00182, which was issued by the Department of the Interior (DOI), Interior Business Center, for single engine air tanker (SEAT) flight services for the Bureau of Land Management (BLM) to support fire suppression operations in the contiguous 48 states. The decision to cancel the solicitation followed Evergreen's protests of the award of six contracts under the solicitation. The protesters contend that the agency had no reasonable basis to cancel the solicitation, and that the cancellation was a pretext to avoid resolving protests.

We deny the protests.

BACKGROUND

As part of its mission to administer public lands, BLM is responsible for the suppression of wildland fires throughout the United States. The procurement at issue here sought

contractor-operated and maintained SEAT aircraft to transport fire retardant materials and/or suppressants to wildland fires as directed by the government. Agency Report (AR) (B-414238.5), exh. 2, Acquisition Plan, at 1. The aircraft were to be part of the national framework for the suppression of wildland fires and would provide an “essential wildland fire initial attack support resource” for BLM. Contracting Officer’s Statement (COS) at 2.

The solicitation, which DOI issued as a request for proposals (RFP) on September 12, 2016, contemplated the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts for up to 33 SEAT aircraft for a base year and four option years, as well as an optional 6-month extension. AR, exh. 5, RFP amend. 2, at 6, 35-36.¹ The aircraft were being procured for the exclusive use of BLM for 100-day periods; when an order was issued, the aircraft and pilots were to be reserved exclusively for BLM support and when not in use, remain available in alert status until called upon.² *Id.* at 6, 12, and 35; COS (B-414238.5) at 1-2. The RFP identified three 100-day exclusive-use periods that covered fire season: May 20 through August 27; June 5 through September 12; and June 12 through September 19.³ RFP at 8, 43; Memorandum of Law (MOL) at 4. In this regard, even though the base year of the contract ran from March 2017 (or contract award, if later) through February 2018, the agency did not intend to issue any task orders for 100-day periods outside of the fire season dates identified in the solicitation. RFP at 43; MOL at 4. Notably, DOI structured the procurement such that the minimum guarantee under the contract would be the 100-day exclusive-use period during the base year. RFP at 10, 35-36.

DOI received proposals from 15 firms prior to the October 12, 2016, submission deadline. COS at 2. In December 2016, the agency selected for award six offers for 33 aircraft, including the proposal submitted by Henry’s.⁴ COS at 2-3. Thereafter, Evergreen and another disappointed offeror filed protests with our Office. In January 2017, DOI took corrective action in response to the protests, which included reevaluating the proposals submitted and making a new best-value award determination. Notice of Corrective Action, January 10, 2017, at 1-2.

¹ The solicitation was amended two times. Citations to the RFP are to the conformed version issued via amendment 2.

² As explained more fully below, *infra*, at 3-4 n.6., the agency separately awarded IDIQ contracts for fire suppression services on an “on-call” basis--not for a pre-determined exclusive-use period--covering the same period of performance. *See* AR, exh. 2, On-Call Solicitation.

³ The agency intended to award task orders for 11 aircraft per exclusive-use period. MOL at 4. Further, the RFP required the agency to issue contractors a notice to proceed 10 days prior to the start of the exclusive-use period. RFP at 43.

⁴ The RFP provided for award on a best-value basis, considering demonstrated technical/management capability, past performance, and evaluated price. RFP at 66.

Following this corrective action, on February 22, 2017, the agency announced the selection of the same six firms for award (including Henry's). AR (B-414238.5), exh. 19, Notice of Unsuccessful Offeror, at 1. Once again, Evergreen and another disappointed offeror protested the awards in early March 2017. In its second protest, Evergreen challenged various aspects of the evaluation of proposals, including an objection to the agency's awards on an offer-by-offer basis rather than an aircraft-by-aircraft basis. Evergreen Protest, Mar. 3, 2017, at 1-41. The agency submitted a report defending its evaluation of proposals and award decisions.⁵ In its report, the agency produced RFP-required aircraft questionnaires submitted by the awardees, as well as the awardees' schedules for services and prices, among other relevant documents. See AR (B-414238.5), exhs. 21-32, Awardee Aircraft Information (Questionnaires and Schedule A's). Following its review of the agency's record, Evergreen submitted a voluminous supplemental protest objecting to numerous aspects of the awardees' submissions. Evergreen Comments/Supp. Protest, Apr. 17, 2017, at 1-72.

Thereafter, by letter of April 26, DOI advised our Office of its intent to cancel the solicitation in response to Evergreen's supplemental protest. AR, exh. 10, Notice of Corrective Action, at 1-2. In its letter, DOI explained that its decision was based on the new allegations and information provided in Evergreen's supplemental protest. Id. at 1. The agency further explained:

Fire season is quickly approaching. DOI does not have time to re-evaluate proposals, issue a new award decision, award contracts, and award task orders thereunder prior to fire season.[] Members of the evaluation team need to turn their attention in the upcoming weeks to DOI's firefighting mission, and utilizing the resources already under contract.

Id. at 1-2. The agency also noted that "based on the unique circumstances of this procurement and the SEAT program," it anticipated additional protests, regardless of the outcome of a reevaluation. Id. at 2 n.1. In this respect, the agency explained that most offerors--including Henry's and Evergreen--held on-call contracts with the agency for fire suppression services and would likely receive more work under those contracts if performance under the exclusive-use contracts was delayed.⁶ Id.

⁵ Prior to the submission of an agency report, our Office dismissed the protest submitted by the other disappointed offeror because the protester was not an interested party to pursue its protest. See Fletcher Flying Servs., Inc., B-414238.4, Apr. 7, 2017 (unpublished decision).

⁶ Pursuant to the on-call solicitation, DOI would issue orders for fire suppression services (SEAT aircraft and pilots) on an as-needed basis for a to-be-determined number of days. See AR, exh. 2, On-Call Solicitation § A2.1, at 9. Awardees were not guaranteed task orders for any definitive period of time; the minimum guarantee under the IDIQ procurement was simply an order to make all required items (e.g., aircraft, fuel service vehicle) available for inspection. Id. §§ C14.1, C14.2, at 42-43. The on-call
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At the request of Henry's, the agency counsel offered additional rationale for DOI's decision to cancel the solicitation, specifically pointing to three concerns regarding the procurement brought to the agency's attention in Evergreen's supplemental protest. AR, exh. 15, Email from Agency Counsel to Parties, May 2, 2017. Agency counsel also reiterated that DOI did not believe it could conduct a reevaluation in sufficient time for fire season and that it would be in the unsuccessful offerors' interests to file protests to delay any award of the exclusive-use contracts because the offerors held on-call contracts. Id. For example, counsel pointed out that Evergreen's initial protest objected to the agency's decision to evaluate and award contracts on an offer-by-offer basis (rather than aircraft-by-aircraft) and that any reevaluation would still be conducted based on the same methodology. Id. As a result, agency counsel contended that Evergreen would likely file another protest on this basis if it were dissatisfied with any reevaluation. Id. Agency counsel closed her email by explaining, once again, as follows:

[T]he agency cannot wait until a wildfire arises to secure commitments from companies and deploy aircraft. In addition to taking up the agency personnel's time and energy, securing/deploying aircraft also expends agency funding. In the very short term, the Solicitation will no longer reflect the agency's needs. Accordingly, cancellation of the Solicitation is reasonable.

Id.

On May 4, DOI cancelled the solicitation. AR, exh. 17, Cancellation of Exclusive-Use Solicitation, at 2. The same day, our Office dismissed Evergreen's protests, explaining that the cancellation of a solicitation renders academic any protest of the award of a contract under the solicitation. Evergreen Flying Servs., Inc., B-414238.5, B-414238.6, May 4, 2017, at 1 (unpublished decision). On May 5, Henry's and Evergreen filed the instant protests.

DISCUSSION

Henry's and Evergreen protest the agency's decision to cancel the solicitation.⁷ The protesters maintain that the agency had no reasonable basis to cancel the solicitation and that the cancellation was a pretext to avoid further protests. According to Evergreen, the evaluation errors it identified in its earlier protests could "easily" be

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procurement covered the same period of performance as the exclusive-use procurement. Id. § A2, at 7.

⁷ Although Henry's and Evergreen filed separate protests challenging the cancellation, our Office consolidated the protests, and the agency submitted a single report in response to the protests.

addressed in “all of fifteen minutes” by deeming certain aircraft unacceptable and awarding a contract to Evergreen for its six aircraft. Evergreen Protest, May 5, 2017, at 23-24. We have considered all of the protesters arguments in support of their position, and find that none provides a basis to sustain the protest.⁸

In a negotiated procurement, such as this one, an agency has broad authority to decide whether to cancel a solicitation, and to do so, need only establish a reasonable basis. VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6. Thus, we have consistently explained that an agency need only establish a reasonable basis to support a decision to cancel a solicitation. See, e.g., AeroSage LLC, B-410648.2, B-410648.3, Mar. 20, 2015, 2015 CPD ¶ 111 at 3. A reasonable basis to cancel exists when, for example, an agency concludes that a solicitation does not accurately reflect its needs. WKF Friedman Enters., B-409892.2, Sept. 25, 2014, 2014 CPD ¶ 282 at 2. Moreover, an agency may properly cancel a solicitation regardless of when the information precipitating the cancellation first surfaces or should have been known. Daston Corp., B-292583, B-292583.2, Oct. 20, 2003, 2003 CPD ¶ 193 at 3.

However, where, as here, a protester has alleged that the agency’s rationale for cancellation is but a pretext—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 canceling the acquisition. Inalab Consulting, Inc.; Solutions by Design II, LLC, B-413044 et al., Aug. 4, 2016, 2016 CPD ¶ 195 at 7; Miller, Davis, Marter & Opper, P.C., B-242933.2, Aug. 8, 1991, 91-2 CPD ¶ 176 at 4. Notwithstanding such closer scrutiny, and even if it can be shown that 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. See Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 4. Cancellation of a procurement is reasonable where the agency determines that it no longer has a requirement for the item solicited, or where the agency discovers an

⁸ The protesters also objected to a May 2 email from the contracting officer requesting that the on-call contractors provide pricing for SEAT aircraft for periods of 90 days or greater. See AR, exh. 14, Email Requesting 90-Day or Greater Pricing. The protesters contend that any modification to the on-call contracts to include exclusive-use periods of 90 days or longer would be outside the scope of the underlying contract. Henry’s Protest, May 5, 2017, at 7-8; Evergreen Protest, May 5, 2017, at 28-30. Prior to the submission of its agency report, DOI advised our Office that the agency withdrew its request for pricing, and that the agency did not intend to issue orders for any guaranteed periods under the on-call contracts this year. MOL at 4; AR, exh. 19, Email Withdrawing Request for 90-Day or Greater Pricing. As such, these protest grounds have been rendered academic and will not be addressed further. See Ferris Optical, B-403012.2, B-403012.3, Oct. 21, 2010, 2010 CPD ¶ 265 at 2. Likewise, any protest arguments in opposition to the cancellation that are based on the agency’s request for pricing also fail.

existing contract for its requirement would be more advantageous to the government than continuing with the procurement. Id.

As explained above, the agency first selected six firms for awards on December 15, 2016, more than 5 months before the first exclusive-use period was to begin. Several protests followed, culminating in a lengthy supplemental protest filed by Evergreen on April 17. In this filing, Evergreen raised numerous protest allegations challenging various aspects of the evaluation of most of the awarded aircraft, as well as DOI's evaluation of Evergreen's proposal and the agency's best-value award determination. The agency concedes that certain of these allegations had merit, and, consequently, it decided during the week of April 24--less than a month before the first exclusive use period was to begin--that some form of corrective action was warranted. COS at 3. The agency acknowledges that a reevaluation of the tens of aircraft proposed by the 15 offerors could have resulted in a different award decision. Id. However, as more fully discussed below, the agency maintains that it simply did not have sufficient time to conduct a reevaluation of proposals and make a new best-value determination prior to its need for SEAT aircraft at the start of the 2017 fire season. Because, according to the agency, a reevaluation was not feasible given the short timeframe, and another procurement vehicle was in place to fulfill its needs, the agency cancelled the solicitation. Id.

Thus, the record shows that impetus for the cancellation of the solicitation was Evergreen's supplemental protest. As a general rule, agencies have broad discretion to take necessary steps to ensure a fair and impartial competition. Northrop Grumman Info. Tech., Inc., B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3. Moreover, an agency's decision to cancel a solicitation in response to a protest is not per se unreasonable, nor does it demonstrate that the decision to cancel was made only to avoid the resolution of a protest, as the protesters suggests. See Lasmer Indus., Inc., supra; see generally JoaQuin Mfg. Corp., B-238169.2, May 16, 1990, 90-1 CPD ¶ 474 at 4. We will not find a cancellation of a solicitation to be unreasonable solely because it was prompted by a protest. See, e.g., Information Ventures, Inc., B-297815.2, Feb. 13, 2006, 2006 CPD ¶ 40 at 2 (finding the cancellation of a solicitation reasonable where a lack of funding justified the decision to cancel, even if decision to cancel was prompted by a protest). Thus, the question is not what the agency would have done absent a protest, as Evergreen insists, but rather, after consideration of the entirety of the agency's justification for the cancellation, whether the cancellation was reasonable.

Here, in deciding to cancel the solicitation, the agency explains that it could not afford to "sit on its hands" and wait for a reevaluation before it could begin issuing task orders and deploying aircraft to meet DOI's urgent firefighting needs. MOL at 6, 9. In this respect, the agency maintains that a second reevaluation would have pushed the exclusive-use contract start date well into fire season, which would have been an "unacceptable result." Id. at 7. The agency explains that it cancelled the solicitation because it had an "immediate need" to prepare aircraft for deployment and assign agency personnel to locations spread across the country to manage the aircraft for aerial fire suppression. COS at 3. Consequently, the agency made the decision to

acquire its “urgent requirements” under a different available procurement vehicle--the on-call contracts--rather than take the risk that the exclusive-use contracts would be available on time.⁹ MOL at 9.

The agency further asserts that the exclusive-use procurement is no longer beneficial to the agency. MOL at 7. In this regard, as SEAT aircraft are deployed under the on-call contracts, less funding is available for aircraft under the exclusive-use contracts, and the agency’s requirements are diminished.¹⁰ Id. at 6, 9. Significantly, as highlighted above, the exclusive-use procurement was structured such that the contracts required that DOI issue at least one order for each of the 33 aircraft for a full 100-day period, the first of which was to begin May 20.¹¹ RFP at 35, 43. According to the agency, if the contracts could not be awarded and task orders issued in time for the initial exclusive-use period, then the minimum guarantee could not be met without either creating unnecessary additional overlap between exclusive-use periods, or having the exclusive-use periods extend beyond fire season, when SEAT services are not necessary. MOL at 9; COS at 4. As a result, the agency asserts that, given the delay in the start date, it no longer had a requirement for the guaranteed minimum under the exclusive-use contracts.¹² MOL at 6, 9; COS at 4.

⁹ Indeed, by May 12, the agency already sought seven SEAT aircraft for fire suppression services. COS at 3. Moreover, the agency points to the availability of aircraft under the on-call contracts as a reason for not overriding the Competition in Contracting Act (CICA) stay of performance implemented during Evergreen’s March 3 protest. Id. at 5. Contrary to Evergreen’s suggestion, the mere fact that the agency did not previously override the CICA stay (prior to corrective action) does not demonstrate that the subsequent cancellation was unreasonable. See Evergreen Comments, June 16, 2017, at 10.

¹⁰ As of June 5, the agency had already deployed 13 aircraft under the on-call contracts. MOL at 6 n.2. Moreover, the agency predicted that by mid-June it would have expended approximately 1/4 of its SEAT budget under the on-call contract and would not have sufficient funds to award the exclusive-use contracts. Id. at 7 n.3. Our Office will not recommend that an agency proceed with an acquisition for which no funding is available. Information Ventures, Inc., supra.

¹¹ Because the RFP required that the agency issue the contractor a notice to proceed at least 10 days prior to the start date, in actuality, the agency would have needed to issue task orders for specific aircraft to be deployed to a particular destination by no later than May 10. See RFP at 43.

¹² We also find compelling the agency’s explanation that if it were to reinstate the exclusive-use solicitation, it would have to significantly modify the solicitation--e.g., alter the minimum guarantee or modify the start date--such that the changes could be material and could require reopening the competition. See MOL at 10; see also Federal Acquisition Regulation (FAR) § 15.206(e) (requiring that a contracting officer cancel a

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On this record, we find DOI's rationale for cancelling the solicitation to be justified, reasonable, and supported by the record. Evergreen's supplemental protest identified flaws in the procurement that warranted corrective action. Without sufficient time to perform a complete reevaluation of proposals, the agency chose to begin fulfilling its fire season requirements using a different contract vehicle. By the time any reevaluation could have been completed, the agency would no longer have a need for the guaranteed minimums under the exclusive-use contracts. Thus, while the cancellation was prompted by a bid protest, the agency has established that the exclusive-use solicitation no longer reflected its needs, which is a reasonable basis to support a decision to cancel a solicitation. See Tien Walker, B-414623.2, B-414623.3, July 10, 2017, 2017 CPD ¶ ___ at 3-4 (cancellation not a pretext to avoid resolving a protest where the agency's requirements were time dependent and had changed due to the pendency of the prior protest); VIRE Consulting, Inc., B-408148.2, Nov. 26, 2013, 2013 CPD ¶ 272 at 3 (cancellation of solicitation following corrective action is reasonable where the solicitation no longer reflected the agency's needs).

The protesters disagree with the agency as to whether a reevaluation would have been time-consuming and, consequently, time-prohibited. According to Evergreen, the agency had "ample time" to perform a reevaluation and make a new award determination. Evergreen Protest, May 5, 2017, at 24. Evergreen points out that the reevaluation conducted during the agency's earlier corrective action allegedly took less than a week. Evergreen Comments, June 16, 2017, at 20. The protester also highlights other contract-related activities that the agency had undertaken following its decision to cancel the solicitation. Id. at 23.

As noted above, the agency maintains that a reevaluation would have taken a "substantial amount of time" and was not feasible especially due to the onset of fire season. COS at 5. The agency asserts that the initial reevaluation (which it represents took more than a month) was "much simpler" than the reevaluation that would have been necessitated by Evergreen's supplemental protest. MOL at 7-8. The agency further explains that because mistakes were made in the first and second evaluation, the third evaluation would likely take more time "to get things right." Id. at 8.

The agency outlines what a reevaluation would have entailed: the geographically dispersed evaluation team members would have to meet in one location and review all 15 proposals again. COS at 3. The evaluators would then reassign technical strengths and weaknesses, ensuring consistency between offers, and thoroughly document the advantages and disadvantages of proposals justifying the ratings. Id.; MOL at 8. In light of Evergreen's protest allegations, the technical experts would have to recalculate the aircraft capacity for each of the more than 60 aircraft proposed. Id. Then, the evaluation team would need to document numerous trade-off analyses. MOL at 8. The

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solicitation and issue a new one where amendments to a solicitation would be so substantial as to exceed what prospective offerors reasonably could have anticipated).

reevaluation--which would have been the third for the acquisition--would have also required additional internal reviews, including a “lengthy” legal review as well as approval from DOI’s Acquisition Process Advisory Council. COS at 3. Moreover, contrary to Evergreen’s position, DOI could not simply make award to Evergreen for its six aircraft, and then ignore all of the other alleged evaluation flaws. See MOL at 8.

The agency further explains that by the time it decided to cancel the solicitation, members of the evaluation team were already busy preparing for the impending fire season. MOL at 6. In this respect, participants of the evaluation team have other primary responsibilities within their own organizations (i.e., serving as pilots and air attack supervisors) and would have needed management permission to participate in a reopened source selection process. COS at 3. The agency lays out a list of “essential” firefighting-related tasks that occupied the evaluators’ time in the weeks preceding fire season. MOL at 6. The agency represents that these other responsibilities and tasks, some of which required significant travel across the country and significant overtime hours, made it impracticable for the evaluation team to meet and perform a reevaluation prior to the first exclusive-use period.¹³ Id.

In light of the detailed explanation provided by the agency, we have no basis to reject DOI’s assertion that it was not in the government’s interest to pull the evaluators from their “critical work” to perform the reevaluation. See id. at 7. While Evergreen believes that the evaluation errors it alleged in its protest could have been easily and quickly addressed by the agency, the agency explains why this was not the case. Simply put, we find convincing the agency’s explanations that once fire season was active, it was not realistic to gather the evaluation team back from their primary duties to reanalyze and reevaluate proposals.

The protesters next assert that cancellation was unnecessary because the agency could have used both the exclusive-use and on-call contract vehicles during the 2017 fire season, relying on the on-call contracts in the short-term and switching to the exclusive-use contracts when the new awards were made. Henry’s Protest, May 5, 2017, at 6-7. Here, too, the agency provides a reasonable response. DOI explains that once it issues task orders for a specific firefighting effort, it becomes impracticable for the agency to transfer those requirements to a different contractor. MOL at 9. The agency points to “significant duplication of costs” stemming from the mobilization and demobilization costs of multiple contractors. Id. at 10. In addition, the active firefighting aircraft (ostensibly procured under an on-call contract) would have to be replaced with a new crew (under the exclusive-use contract) that did not possess the “specific operational knowledge and experience” of the previous crew. Id. The agency would thus have to spend effort ensuring the new aircraft crews were “up to speed” and adequately prepared to safely respond to the fires. Id.

¹³ The agency also reasonably explains why assembling a new, different evaluation team would not be practical. See MOL at 7.

Given these considerations, we agree with the agency that the operational disruption of changing contract vehicles mid-operation would have been significant and not in the agency's interest. Moreover, as explained above, as agency funds were expended under the on-call contracts, the agency would not be able to fulfill the minimum guarantee under the exclusive-use contracts. COS at 4. Ultimately, a protester's disagreement with the agency's judgment concerning its needs and how to best accommodate them does not demonstrate that the agency's judgment was unreasonable. See Gallup, Inc., B-410126, Sept. 25, 2014, 2014 CPD ¶ 280 at 5. We also have previously recognized that avoiding procuring duplicative services may reasonably support a decision to cancel a solicitation. Social Impact, Inc., B-412655.3, June 29, 2016, 2016 CPD ¶ 176 at 5.

We also find unpersuasive the protesters' assertion that the agency should be required to simply make new awards under the solicitation in time for the 2018 fire season, or that cancellation was unreasonable because the agency will still need fire suppression services throughout the IDIQ contracts' 5-year periods of performance. See Henry's Comments, June 16, 2017, at 3. First, the agency explains that the minimum guarantee was established based on the agency's budget and anticipated needs for the 2017 fire season, and that it obtained funding sufficient to meet the minimum guarantee in 2017. MOL at 10. DOI represents that while it will likely want exclusive-use SEAT services in upcoming summers, it does not yet know what its budget will be. In this respect, if it were to make a new award decision (when convenient) and delay performance until the 2018 fire season, then the agency would be obligating itself to procure 33 aircraft for 100 day periods for the 2018 fire season. Id. We recognize that the contractors would prefer this compromise; however, the agency understandably asserts that this is a "materially different bargain that the Agency does not wish to undertake."¹⁴ Id. We see nothing improper with the agency's explanation in this regard. In addition, as the agency notes, it was under no obligation to exercise the options or issue any orders above the mandatory minimum. The fact that the contracts, with all options exercised, would have covered a 5-year period does not demonstrate that the cancellation was not justified.

Lastly, to be clear, nothing in the record supports Evergreen's assertion that the cancellation was a pretext to avoid awarding the firm a contract. On the contrary, the contracting officer notes that Evergreen is considered a "capable, qualified contractor" and that the agency "would have been happy to make award to Evergreen if such an award were deemed to be in the government's best interests." COS at 3. The

¹⁴ DOI further explains that it has closely scrutinized the exclusive-use solicitation and acquisition strategy, and if it issues a new solicitation in the future, there would likely be significant changes to the terms. MOL at 10-11; COS at 4. For example, the agency would prefer more flexibility in its procurement with respect to the minimum guarantee, the pre-defined exclusive-use periods, and the required number of aircraft for award. COS at 4. The agency also points to concerns raised in Evergreen's protests that may be rectified through more clarity in a revised solicitation. MOL at 11.

contracting officer further explains that the agency has worked with Evergreen for “many years” and DOI anticipates that Evergreen will receive orders under its on-call contract this summer. Id. Absent anything in the record to support Evergreen’s charge, and given that government officials are presumed to act in good faith, we find that the allegation of animus or bias is unsupported and, thus, unmeritorious. See Inalab Consulting, Inc.; Solutions by Design II, LLC, supra, at 9.

In sum, the record confirms that the agency’s decision to cancel the solicitation was prompted by Evergreen’s supplemental protest. Nevertheless, in light of the time-sensitive nature of the required fire suppression support services, the RFP’s restrictive minimum guarantee that would prove difficult for DOI to meet (if it were to conduct a reevaluation of proposals), and the fact that another contract vehicle was available for the agency to acquire SEAT aircraft for the 2017 fire season, we find that the cancellation was reasonable based on the justifications advanced by the agency.

The protest is denied.

Susan A. Poling
General Counsel