U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States



# Decision

**Matter of:** Abacus Technology Corporation

**File:** B-416390.5

**Date:** May 7, 2019

Gregory R. Hallmark, Esq., and Elizabeth N. Jochum, Esq., Holland & Knight LLP, and Alexander B. Ginsberg, Esq., and Meghan D. Doherty, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.
Holly A. Roth, Esq., Elizabeth G. Leavy, Esq., and Lawrence P. Block, Esq., Reed Smith LLP, for Salient CRGT, Inc., the intervenor.
John Cornell, Esq., Department of Homeland Security, 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 alleging that the agency improperly cancelled a solicitation for the issuance of a task order is denied where the record demonstrates that the expiration date of the underlying indefinite-delivery, indefinite-quantity contract prevented the agency from issuing a task order with a period of performance that adequately met its needs.

**DECISION**

Abacus Technology Corporation (Abacus), of Chevy Chase, Maryland, protests the cancellation of request for proposals (RFP) No. HSSCCG-17-R-00010, issued by the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), for information technology services. The protester contends that the agency lacked a reasonable basis to cancel the solicitation and that the cancellation was a pretext to avoid defending against a possible future protest.

We deny the protest.

BACKGROUND

On June 27, 2017, USCIS issued the solicitation pursuant to the provisions of Federal Acquisition Regulation (FAR) subpart 16.5 to firms holding DHS Enterprise Acquisition

Gateway for Leading-Edge Solutions (EAGLE) II indefinite-delivery, indefinite-quantity (IDIQ) contracts in Functional Category (FC) I. RFP at 1.[1] See also Contracting Officers' Statement (COS) at 1. The solicitation contemplated the award of a single task order, referred to as the National Area and Transnational Information Technology Operations and Next-Generation Support Services (NATIONS) II task order, to fulfill a requirement of USCIS's Office of Information Technology to provide a broad range of information technology support services to agency end users. RFP at 22. The performance work statement required the contractor to provide service desk support, field services, service center services, account management services, hardware incident resolution, and continuity of operations coordination. Id. at 22-23.

The solicitation contemplated the award of a hybrid fixed-price-award-fee, cost-plus-award-fee, and cost-reimbursement task order with a period of performance of a base year followed by up to three option years or until "the end of the period of performance of the underlying EAGLE II FC I Master Contract." Id. at 1, 3, 13. The solicitation anticipated award on a best-value tradeoff basis considering the following factors: management approach, technical approach, past performance, and cost/price. Id. at 17. Proposals were due by July 21. Id. at 2.

In response to the solicitation, USCIS received proposals from 12 offerors, including, as relevant here, proposals from Abacus and Salient CRGT, Inc. (Salient), an offeror located in Fairfax, Virginia. COS at 1. On May 14, 2018, USCIS issued the task order to Abacus. Memorandum of Law (MOL) at 2. Salient filed a protest with our Office on May 18 challenging, among other things, the agency's cost realism analysis. We docketed the protest as B-416390.

Subsequent to the filing of the protest by Salient, USCIS notified our Office of its intent to take corrective action, which rendered the protest academic. Specifically, the agency explained that it had discovered a number of errors in its cost realism analysis and that, as a result, it intended to revise its evaluation report and make a new award decision. Agency Notice of Corrective Action, June 15, 2018; COS at 1-2. On June 19, we dismissed Salient's protest as academic. Salient CRGT, Inc., B-416390, June 19, 2018 (unpublished decision).

During the implementation of the agency's corrective action, USCIS decided to establish a competitive range comprised of four offerors that submitted the most highly rated proposals, including Abacus and Salient, and to conduct discussions with those four offerors.[2] COS at 2; MOL at 2. On November 26, at the conclusion of its reevaluation, USCIS issued the task order to Salient. MOL at 2.

---

[1] Citations to the RFP are to the conformed copy provided in Exhibit 1 of the agency report.

[2] The contracting officer represents that the initial award was made without discussions. COS at 1.

On December 4, Abacus filed a protest challenging multiple aspects of the agency's evaluation, including the agency's most probable cost adjustment, which the agency prepared as part of its cost realism analysis. We docketed this protest as B-416390.2. The agency submitted is agency report in this protest on January 3, 2019. On January 14, in response to the agency report, Abacus filed a supplemental protest, challenging additional aspects of the agency's most probable cost adjustment.

On January 22, USCIS notified our Office of its intent to take corrective action. Agency Report (AR), Exh. 21, Agency Notice of Corrective Action. Specifically, the agency represented that it had identified errors in its most probable cost adjustment, which may have impacted the cost/technical tradeoff determination. Id. at 2. As a result, USCIS proposed to rescind the award to Salient. Id. Relevant here, the agency also proposed to cancel the solicitation and resolicit its requirement using a different contract vehicle. Id. The agency's notice provided, in pertinent part, as follows:

> The award to Salient will be rescinded, and the agency will begin a fresh acquisition using a different contract vehicle, as the task order being protested is an award under EAGLE II, which expires in September of 2020 and thus is not available to provide five years of uninterrupted service.

Id. at 2.

Abacus filed a response to the agency's notice in which Abacus objected to the scope of the corrective action. Protester's Objection, Jan. 24, 2019, at 1. Specifically, Abacus contended that the agency's rationale for cancelling the procurement and selecting a new contract vehicle was unreasonable. Id. Moreover, Abacus contended that such action was unfair and inequitable to offerors who, like Abacus and Salient, had expended significant costs in pursuing the award of the task order. Id. at 1-2.

On January 25, 2019, our Office dismissed the protest as academic. Abacus Technology Corporation, B-416390.2, B-416390.3, Jan. 25, 2019 (unpublished decision). In dismissing the protest, we explained that, when an agency terminates an awardee's contract and cancels a solicitation, the agency action renders academic a protest of that award. Id. at 1 (citing Ferris Optical, B-403012.2, B-403012.3, Oct. 21, 2010, 2010 CPD ¶ 265 at 1-2). We do not consider academic protests because to do so would serve no useful public policy purpose. Id. (citing Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132).

In our dismissal, we further explained that, to the extent Abacus objected to the agency's decision to take corrective action, or the scope of that action, the protester could file a protest challenging the agency's actions in accordance with our Bid Protest

Regulations.[3] Id. at 1-2. Such objections, however, do not generally bear on the matter that was before us, i.e., whether a protester's challenge to an agency's evaluation of proposals and the subsequent award is rendered academic by an agency's proposed termination of that award. Id. at 2. Accordingly, we concluded that Abacus' objections provided no basis for our Office to deny the agency's request for dismissal of the protest. Id.

The agency cancelled the solicitation on January 28. AR, Exh. 22, Cancellation; MOL at 3. On February 1, Abacus filed the instant protest challenging the scope of the agency's corrective action.[4]

DISCUSSION

Abacus contends that USCIS's cancellation of the solicitation lacks a reasonable basis. Protest at 1. Specifically, the protester contends that the agency's rationale for cancelling the solicitation is premised upon an incorrect reading of the underlying EAGLE II IDIQ contract and that any alleged desire for a five-year period of performance is belied by agency actions over the course of this procurement. The protester contends that the cancellation is, instead, a pretext to avoid defending against yet another possible protest.

In a procurement conducted pursuant to FAR subpart 16.5, 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. American Sys. Corp., B-412501.2, B-412501.3, Mar. 18, 2016, 2016 CPD ¶ 91 at 6. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. Id. 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. Social Impact, Inc., B-412655.3, June 29, 2016, 2016 CPD ¶ 176 at 3.

Here, the agency's rationale for the cancellation is set forth in the notice of corrective action submitted to our Office during the pendency of the earlier protest brought by Abacus, see AR, Exh. 21, Agency Notice of Corrective Action, as well as the contracting officer's statement of facts submitted to our Office during the pendency of the subject protest, see COS at 7, 9-10. In explaining the agency's rationale, the contracting officer represents that the "agency desires a longer period of performance than is now remaining on EAGLE II, ideally [] a 60 month period of performance, consisting of a

[3] In its objection to the scope of the agency's corrective action, Abacus indicated that it was prepared to file a separate protest if necessary. Protester's Objection, Jan. 24, 2019, at 2.

[4] The estimated value of the task order at issue here exceeds $10 million and, therefore, exceeds the threshold for GAO bid protest jurisdiction. 41 U.S.C. § 4106(f).

twelve month base and four twelve month options." Id. at 10. See also MOL at 8 (stating that the agency intends to select "a new contract vehicle that would allow for a longer period of performance than the 28 months left on EAGLE II, with a preferred period of performance of 60 months").

We find the agency's stated rationale in cancelling the solicitation to be reasonable. As noted above, we have consistently stated that a reasonable basis to cancel exists when the agency determines that the solicitation does not accurately reflect its needs. American Sys. Corp., supra, at 8. More specifically, we have stated that the agency may reasonably cancel a solicitation when the agency requires a longer period of performance than provided for under the terms of the solicitation. VIRE Consulting, Inc., B-408148.2, Nov. 26, 2013, 2013 CPD ¶ 272 at 4. As explained in more detail below, Abacus's arguments to the contrary provide no basis upon which to sustain the protest.[5]

Expiration Date of the Underlying IDIQ Contract

In challenging the agency's cancellation, Abacus first alleges that the agency's rationale is premised upon an incorrect reading of the underlying EAGLE II IDIQ contract. Protest 4. Specifically, Abacus contends that, pursuant to the terms of the underlying IDIQ contract, a task order issued under the current solicitation could be performed through September 2021, not September 2020. Id. In this regard, the protester explains that the period of performance of any task orders issued against the IDIQ contract may extend "up to twelve (12) months beyond the expiration" of the underlying contract. Id. (citing AR, Exh. 25, EAGLE II Master Contract, § B.2, at 9).[6] Thus, because the IDIQ contract expires in September 2020, the protester argues that performance of any task orders may continue through September 2021.

Abacus's argument mischaracterizes the agency's notice of corrective action. Nowhere does USCIS assert that the period of performance of any task order issued against the EAGLE II IDIQ contract could extend only through September 2020. Rather, in its notice of corrective action, USCIS merely asserts that the IDIQ contract expires in

---

[5] Although our decision does not specifically address every argument raised by Abacus, we have considered all of its arguments and conclude that none provides a basis upon which to sustain the protest.

[6] Section B.2 of the EAGLE II IDIQ contract provides as follows:

> [Task orders] may be issued at any time during the base and/or option period. The performance periods will be specified in the [task orders] and may include option periods which extend the [task orders] up to twelve (12) months beyond the expiration date of this contract.

AR, Exh. 25, EAGLE II Master Contract, § B.2, at 9.

September 2020, which is an accurate statement. AR, Exh. 21, Agency Notice of Corrective Action, at 2 (stating that "the task order being protested is an award under EAGLE II, which expires in September of 2020") (emphasis added); AR, Exh. 24, EAGLE II Period of Performance (indicating that the IDIQ contract expires on September 26, 2020). In its protest filings, the agency agrees with Abacus, acknowledging that "[b]y the terms of the EAGLE II contract at § B.2, an order's performance period can exceed the expiration of the underlying contract by 12 months." MOL at 7. See COS at 9. Accordingly, contrary to the protester's allegations, the record does not demonstrate that the agency's cancellation was premised upon a misunderstanding of the period of performance available pursuant to the terms of the underlying IDIQ contract.

In any event, we fail to see the relevance of this argument. The agency's stated basis for cancelling the solicitation is that the current contract vehicle does not allow the agency to obtain a five-year period of performance, which USCIS contends it prefers.[7] MOL at 8; COS at 10. Thus, any dispute regarding whether a task order issued pursuant to the cancelled solicitation would provide for a period of performance of 20 months or 32 months is not relevant.[8] We conclude that Abacus's argument provides no basis for us to question the rationality of the agency's decision to cancel the solicitation.

Requirement for Increased Period of Performance

Next, Abacus argues that the timing of the cancellation suggests that the agency's decision to cancel the solicitation is unreasonable and pretextual. In this regard, Abacus asserts that the expiration of the EAGLE II contract is not a "new" issue that would justify the agency's "dramatic" change in procurement strategy. Protest at 4. Rather, USCIS "has known from the inception of this procurement that a five-year period of performance was not available, and the Agency has never purported to require such a period." Id. at 5; Comments 3. Abacus argues that any alleged agency preference for a five-year period of performance is belied by agency actions taken over the course of the procurement. Protest at 5; Comments at 3.

In particular, the protester points out that the solicitation, as issued, contemplated a maximum of only four years of performance--not five years. Protest at 4. The protester further points out that, in May 2018, the agency elected to move forward with the procurement by issuing the task order to Abacus despite the fact that there remained approximately only three years of performance. Protest at 4. Likewise, in November

[7] There is no dispute among the parties that a task order issued at this time against the EAGLE II IDIQ contract could not provide for a five-year period of performance. See Protest at 4; MOL at 7.

[8] We calculate these periods of performance using the date the agency notified our Office of its intent to cancel the solicitation, i.e., January 22, 2019.

2018, the agency again elected to move forward with the procurement by issuing the task order to Salient despite the fact that there remained less than three years of performance. Id.; Comments at 3. Finally, in December 2018, the agency again elected to move forward with the procurement by defending against Abacus's protest despite the fact that, by the time the protest would be resolved by our Office, there would remain only two and a half years of performance. Protest at 4; Comments at 3; Abacus Response (Resp.) to GAO Request for Information (RFI), Apr. 29, 2019, at 2. Relying upon these facts, the protester questions the agency's alleged preference for a five-year period of performance, arguing that "[t]his purported preference is not supported by any of the Agency actions prior to this corrective action." Comments at 3. Rather, Abacus asserts that the agency's stated basis for cancelling the solicitation is a pretext to avoid subsequent protests it might face were the agency to reevaluate proposals and make a new source selection decision under the cancelled solicitation. Id.; Protest at 5.

In response, USCIS concedes that the solicitation, as issued, provided for a period of performance of only four years, explaining that four years was the maximum period of performance available pursuant to the terms of the EAGLE II IDIQ contract. MOL at 7; Agency Resp. to GAO RFI, Apr. 25, 2019, at 3. The agency further concedes that the limited period of performance was known to the agency when it issued the solicitation. See COS at 9; Agency Resp. to RFI at 3. Despite the known "shortcoming[s]" of the EAGLE II IDIQ contract, USCIS explains that it was required to use the EAGLE II IDIQ contract for this acquisition.[9] Id.; Agency Resp. to RFI at 1-2, 4. Thus, the agency asserts that, although it "would have preferred a longer period of performance," such a period of performance "was not available under this mandatory-for-use contract." Agency Resp. to RFI at 3.

Regarding agency procurement decisions made since the issuance of the solicitation, USCIS contends that it was not until recently that other contractual vehicles became available to the agency. Namely, on December 17, 2018, the DHS Chief Procurement Officer announced a portfolio of contracts designated to replace the EAGLE II IDIQ contract. Id. at 2 (citing id., Attach. 3, DHS Press Release, "EAGLE II Determination," Dec. 17, 2018, available at https://www.dhs.gov/news/2018/12/17/eagle-ii-determination (last visited April 25, 2019)).[10] The agency contends that these contracts became part

[9] USCIS asserts that, at the time the acquisition was initiated in May 2017, the EAGLE II IDIQ contract had been designated as the "strategic sourcing vehicle" for information technology sources and, as such, USCIS was required to use the contract unless an exception applied or the DHS Chief Procurement Officer granted a waiver. Agency Resp. to RFI at 1-2, 4 (citing DHS Management Directive 060.01; Homeland Security Acquisition Manual § 3017.7102). USCIS contends that the DHS Chief Procurement Officer did not grant a waiver to USCIS to use an alternative source of supply. Id. at 2. Neither party contends that an exception applied at the time.

[10] The press release explains that DHS "will follow a new strategy in how it obtains information technology (IT) services." Attach. 3, DHS Press Release, "EAGLE II

(continued...)

of DHS's information technology strategic sourcing portfolio on February 2, 2019. Id. Thus, it was not until after Abacus filed its December 4 protest challenging the issuance of the task order to Salient that other contractual options became available to the agency. USCIS asserts that, when faced with the need to take corrective action in response to Abacus's meritorious protest of the award to Salient, the agency rationally decided to make use of the newly available contractual options rather than "sticking with a contract vehicle that would require the agency to transition twice within three years," i.e., once to the task order issued pursuant to the solicitation cancelled here and again when the period of performance concluded in September 2021. Id. at 4.

Where, as here, a protester has alleged that the agency's rationale for cancellation is pretextual, 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. Social Impact, Inc., supra, at 3. Notwithstanding such closer scrutiny, however, the reasonableness standard applicable to the cancellation of a solicitation remains unchanged. Id.

The record here does not show that the agency was motivated by a desire to avoid awarding a contract on a competitive basis or to avoid resolving a protest. Rather, the record shows that the agency was motivated by a desire to take advantage of other contractual options with more flexible periods of performance, rather than continuing to pursue a task order with a "shrink[ing]" period of performance. See Agency Resp. to RFI at 4. We have previously concluded that cancellation of a solicitation is appropriate where an agency identifies an existing contract for its requirement that would be more advantageous to the government than the challenged procurement vehicle. VIRE Consulting, Inc., supra, at 4.

Furthermore, although USCIS's decision to take corrective action to cancel the solicitation was prompted by Abacus's supplemental protest, which the agency determined to be meritorious, see COS at 6-7, we will not find a cancellation of a solicitation to be unreasonable solely because it was prompted by a protest. See e.g., Henry's Aerial Serv., Inc.; Evergreen Flying Servs., Inc., B-414238.7, B-414238.9, Aug. 10, 2017, 2017 CPD ¶ 257 at 6 (denying protest of an agency's cancellation of a solicitation in response to a prior protest where the agency had insufficient time to conduct a reevaluation of proposals before its time-sensitive requirements changed and where another procurement vehicle was available to fulfill its needs). In this respect, the question is not what actions the agency would have taken absent a protest, but rather, after consideration of the entirety of the agency's justification for the cancellation, whether the cancellation was reasonable. Id.

---

(...continued)
Determination." The new strategy reflects a move away from "a single contract vehicle" to "a suite of contract vehicles." Id. The press release further states that this portfolio of contracts will become available in February 2019. Id.

Here, rather than reevaluate proposals in response to Abacus's meritorious protest, which would further reduce the already shortened period of performance, the agency elected to cancel the solicitation in order to procure its requirement using a contractual vehicle that better met its needs. We find the agency's decision to cancel the solicitation to be unobjectionable.[11]

Additional Bases for Cancellation

Finally, in its post-protest filings, the agency asserts that cancellation of the solicitation and re-solicitation of the requirement will also allow the agency "to change the contract type, improve the solicitation evaluation factors, . . . and revise the [performance work statement] to better reflect the needs of the agency." COS at 7. See MOL at 5. Abacus objects to these additional bases, contending that our Office should afford them little weight because the agency advanced them, for the first time, in the heat of litigation. Comments at 2; Abacus Resp. to GAO RFI at 4-5. In the alternative, the protester asserts that these additional bases do not support the agency's decision to cancel the solicitation. See Comments at 4-8. Because we find the agency's cancellation to be reasonable in light of the identified concern regarding the period of performance, we need not resolve whether these additional bases would have provided separate, legally sufficient bases for the agency's cancellation. American Sys. Corp., supra, at 7 n.7.

In sum, we find the agency reasonably cancelled the solicitation where it determined that the expiration of the underlying IDIQ contract prevented the agency from issuing a task order with a period of performance that adequately met its needs.

The protest is denied.

Thomas H. Armstrong
General Counsel

---

[11] Abacus also alleges that USCIS could "readily" correct the errors identified in the most recent award decision and issue a revised award decision "in little time." Protest at 4; Comments at 2. The fact that Abacus would prefer that the agency make an award under the cancelled solicitation, presumably to Abacus, does not provide a basis to question the cancellation. Moreover, Abacus's allegation misses the point. Even assuming for the sake of argument that Abacus's allegation were true, any resulting task order would have a period of performance of less than two-and-a-half years and even shorter were the award again protested. The agency has explained that it cancelled the solicitation in order to use an alternative procurement vehicle that would afford the agency the option for a longer period of performance. Accordingly, the speed at which a new award decision could be made pursuant to the current solicitation is not relevant.