



# Decision

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**Matter of:** Qbase, LLC

**File:** B-417371.4; B-417371.5

**Date:** June 26, 2020

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## DIGEST

Protest challenging agency's decision to cancel the solicitation following a GAO protest is denied where the record reflects that the agency identified substantial changes to its requirements that warranted canceling the solicitation and issuing a revised solicitation.

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## DECISION

Qbase, LLC, a small business located in Herndon, Virginia, protests the cancellation of request for quotation (RFQ) No. HT0015-18-R-0013, issued by the Department of Defense (DOD), Defense Health Agency (DHA), for information technology (IT) operations and sustainment services for DHA's Enterprise Systems Branch (ESB). Qbase also challenges DHA's decision to terminate a Federal Supply Schedule (FSS) task order that had been issued to Qbase under the RFQ. Qbase contends that the agency's decision to cancel the solicitation and terminate the task order lacks a reasonable basis and was a pretext to avoid litigating a protest filed with our Office.

We deny the protest.

## BACKGROUND

DHA issued the RFQ on October 17, 2018, seeking a contractor to assist ESB in fulfilling its requirement to provide IT support services to the DOD customers in DHA's

medical Joint Active Directory (mJAD) system.<sup>1</sup> The RFQ was issued as a small business set-aside using procedures set forth in Federal Acquisition Regulation subpart 8.4 and part 12, to vendors holding General Services Administration, FSS No. 70 (Health Information Technology) contracts. RFQ at 1; COS at 1. The RFQ contemplated the issuance of a fixed price task order with a period of performance of a base year, four 1-year options, and a six-month extension period. RFQ at 2-48, 78; COS at 1.

DHA awarded the task order to Qbase on February 27, 2019. COS at 2. On March 8, another vendor, Inserso Corporation, filed a protest with our Office challenging the agency's evaluation and award. *Id.* In response, the agency notified our Office that it had decided to take corrective action. Our Office dismissed the protest as academic. *Inserso Corp.*, B-417371, Mar. 22, 2019 (unpublished decision).

In July 2019, a new DHA contracting officer was assigned to the procurement and was tasked with implementing the corrective action. As part of the corrective action, DHA reevaluated quotations and conducted a new source selection. COS at 2. On November 12, 2019, Qbase was again selected as the best-value vendor and issued the task order.

Inserso protested the award to GAO on November 15. In response to the protest, DHA notified our Office that it had determined that it would again need to take corrective action. *Id.* The next day, however, the agency withdrew that notice at the request of Qbase, which asserted that it would attempt to settle the protest with Inserso. *Id.* at 2-3. When settlement between the parties failed, DHA resubmitted a notice of corrective action on December 10, 2019. *Id.* at 3. Our Office thereafter dismissed the protest as academic. *Inserso Corp.*, B-417371.2, Dec. 17, 2019 (unpublished decision).

The agency conducted a reevaluation of technical quotations and revised the source selection decision document. COS at 3. On February 13, 2020, DHA selected Qbase as the awardee for a third time. *Id.* Inserso protested the award to our Office, challenging various aspects of the agency's evaluation of proposals and award decision. Prior to the due date for filing its report, the agency informed our Office that it had decided to cancel the solicitation and terminate the task order issued to Qbase. Agency Report (AR), Tab 3, Request for Dismissal, at 1. Specifically, the agency stated:

[T]he Government determined the requirement has changed significantly and no longer reflects the Government's needs. Accordingly, the

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<sup>1</sup> DHA is congressionally-mandated to create efficiencies in DOD's military health system, and accomplishes this goal, in part, by streamlining services, merging like technologies, and migrating IT services from the U.S. Army, U.S. Air Force, and U.S. Navy medical communities into the mJAD system. Contracting Officer's Statement (COS) at 2.

Government has decided to terminate the task order awarded to Qbase, LLC under [the solicitation] and issue a new solicitation [ ] at a later date.

*Id.* Additionally, DHA explained that “[w]hile the Government determined [canceling] the current solicitation is the only reasonable way to meet the Government needs in any circumstance,” the “recent National Emergency caused by COVID-19 and its effect on Government resources have created an environment where this is the only course of action the Government can currently execute.” *Id.*

Our Office then dismissed the protest as academic. *Insero Corp.*, B-417371.3, Mar. 25, 2020, at 1 (unpublished decision). This protest followed.

## DISCUSSION

Qbase argues that DHA improperly canceled the solicitation and terminated its task order as a pretext to avoid defending Insero’s protest. In response, the agency asserts that it had a reasonable basis for canceling the RFQ because DHA’s requirements had substantially changed since DHA released the RFQ in 2018 and the agency wanted to draft a new solicitation reflecting DHA’s current needs. COS at 3. We have considered all of the parties’ arguments, including those that are in addition to or variations of those specifically discussed below, and find no basis to sustain Qbase’s protest.

Agencies have broad discretion in deciding whether to cancel a solicitation, and to do so, need only establish a reasonable basis. *TaxSlayer LLC*, B-411101, May 8, 2015, 2015 CPD ¶ 156 at 6. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs, or where there is a material increase in the services needed to satisfy the agency’s requirements. *Logistics Sols. Grp., Inc.*, B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 3. An agency may properly cancel a solicitation regardless of when the information first surfaces or should have been known, and even if the solicitation is not canceled until after quotations have been submitted and evaluated, or as here, discovered during the course of a protest. *Deva & Assoc. PC*, B-309972.3, Apr. 29, 2008, 2008 CPD ¶ 89 at 5; see *VSE Corp.*, B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6.

However, where, as here, a protester alleges that the agency’s rationale for cancellation is but a pretext—that is 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. *Henry’s Aerial Service, Inc.; Evergreen Flying Services, Inc.*, B-414238.7; B-414238.9, Aug. 10, 2017, 2017 CPD ¶ 257 at 5. 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. *Lasmer Indus., Inc.*, B-400866.2 *et al.*, Mar. 30, 2009, 2009 CPD ¶ 77 at 4.

Here, the record shows that the contracting officer decided to cancel the solicitation based on the determination that the agency’s requirements had changed and therefore

the solicitation no longer met the agency's needs. AR, Tab 4, Memorandum For Record (MFR), at 1. In deciding to cancel the solicitation, the contracting officer explained that, after reviewing Inersor's protest allegations, he engaged the customer--the Enterprise Application Section, Domain & Directory Service Branch (DDSB)--in a teleconference to "inform them of [his] intent to take [c]orrective [a]ction to address the issues in the evaluation." *Id.* The contracting officer stated that "[d]uring the conversation, the [c]ustomer disclosed changes in their current mission significantly impacting the [ESB] requirement as solicited under the [RFQ] and awarded to Qbase, LLC under [the task order]." *Id.*

The contracting officer explained that the changes to the ESB requirements included the following, which were also confirmed by the customer in follow-up email correspondence: (1) the number of full time equivalents (FTEs) increased since the initial RFQ from 73 to 138 (an 89 percent increase); (2) the current requirement is different and larger than what DHA solicited under the initial RFQ, such that the new estimated contract value is \$[DELETED], which is a 54 percent increase over the former independent government cost estimate (\$[DELETED]) and a 144 percent increase over Qbase's awarded price (\$43,309,584); and (3) there are changes to certain services solicited under the 2018 RFQ (including the storage area network, VMWare, and database administrator tasks), resulting in the tasks being modified or replaced. *Id.* at 1-2; AR, Tab 12, Email re: Requirement Change (Feb. 27, 2020). Due to these changes, the contracting officer determined that the solicitation no longer met the agency's need, and therefore, decided to cancel the solicitation. COS at 3.

In response to the protest, the DDSB's project manager further explains that the changes to the agency's requirement were the result of a reorganization within DHA in which the ESB became the DDSB in October 2019.<sup>2</sup> AR, Tab 5, DDSB Project Manager MFR, at 1. The project manager states that, due to the reorganization, for example, "the Database Administration, Storage Area Network, and VMWare support services were re-aligned to sections outside of DDSB," which "resulted in a reduction in support requirements of approximately 7 FTEs." *Id.*

As another example of change to the requirement resulting from the reorganization, the DDSB project manager states that "[i]n December 2019, the Naval Information Warfare Center (NIWC) informed DDSB they would no longer be able to provide support to DDSB operations, which were performed under a NIWC contract." *Id.* The project manager explains that, "[a]lthough the NIWC contract provides much of the same support services as contained in the ESB IT OPS solicitation, it also provides essential support," such as--IT architecture engineering and documentation, risk management, and configuration management services--"which DDSB requires, that are not included in the ESB IT OPS" solicitation. *Id.* The project manager states that "NIWC's services will

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<sup>2</sup> Specifically, DDSB's project manager explains that the "[s]olicitation was released in [October] 2018 to support the ESB and the increase in effort inherited with the formation of the DHA," but that "in October 2019, DHA conducted a re-organization of services wherein, ESB became DDSB." AR, Tab 5, DDSB Project Manager MFR, at 1.

end on 26 Sep 2020,” and that this “change created an additional DDSB requirement of approximately 78 FTEs, which did not exist when we pursued the ESB IT OPS Solicitation.” *Id.* He further explains that, “[i]n addition to the NIWC contract, there are approximately 51 FTEs currently supporting DDSB activities on other contracts which will expire this fiscal year.” *Id.*

Based on the record, we find the contracting officer’s rationale for canceling the solicitation to be reasonable and supported by the record. As noted above, the 2018 solicitation was written for ESB’s requirements, but a DHA reorganization has resulted in shifting and increased work for DDSB not reflected in the 2018 ESB solicitation. The contracting officer’s determination that the solicitation no longer meets the agency’s needs provides a reasonable basis to cancel. *See Logistics Sols. Grp., Inc., supra* at 3.

In response to the agency’s explanation that its requirements have changed due to the reorganization of the ESB into the DDSB, the protester argues that because the reorganization occurred in October 2019, “[i]f DHA’s requirements had truly changed as a result of this reorganization, the [a]gency would have canceled or amended the RFQ between October 2019 and its February 14, 2020 award decision.” Supp. Protest & Comments at 9. The record reflects, however, that the contracting officer first learned about the changed requirements during the course of Inersso’s protest. As referenced above, an agency may properly cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known, even if the solicitation is not canceled until after quotations have been submitted and evaluated, after a contract has been awarded or, as here, after the filing of a protest against the award. *Deva & Assoc. PC, supra* at 5. Accordingly, we do not agree with the protester’s assertion that the agency’s failure to cancel or amend the solicitation more quickly renders the agency’s determination to cancel the solicitation unreasonable. *See Rice Servs., Ltd., B-284997.5, Mar. 12, 2002, 2002 CPD ¶ 59* at 8 (the tardiness of the agency’s determination that a solicitation should be canceled does not alter the overriding principle that an agency should not proceed with a procurement when it reasonably believes that the resulting contract will fail to meet the agency’s requirements).

The protester also asserts that the “record contradicts DHA’s assertion that the reorganization of the DDSB and the expiration of [the] NIWC contract changed DHA’s requirements in such a way as to require DHA to cancel Qbase’s contract and the RFQ.” Supp. Protest & Comments at 12. The protester points to email correspondence between NIWC and DDSB concerning the expiration of NIWC’s staffing support, and argues that, because DDSB had the option of pursuing an arrangement with NIWC to obtain support on a project basis, it was not forced to cancel the solicitation. *Id.* at 10-12. Although the protester asserts that DHA could have considered an alternative option in an attempt to continue to obtain support staff from NIWC rather than include the requirement in the solicitation, 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.

We also find there is no support in the record for Qbase's assertion that the cancellation was a pretext to avoid awarding the vendor a contract. Absent anything in the record to support Qbase'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, lacks merit. See *Inalab Consulting, Inc.; Solutions by Design II, LLC*, B-413044 *et al.*, Aug. 4, 2016, 2016 CPD ¶ 195 at 9. In any event, even if we were to assume that there may have been some personal animus or bias towards Qbase 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 *Starry Assocs., Inc.*, B-410968.3, Dec. 23, 2015, 2015 CPD ¶ 401 at 6.

Finally, Qbase argues that even if the agency is required to cancel the solicitation due to the changed requirement, we should still sustain the protest because the agency failed to conduct reasonable advance planning. Supp. Protest & Comments at 28 ("DHA knew that the NIWC/DDSB support contract would expire in September 2020 as early as December 9, 2019[, yet the agency] failed to engage in advance planning to address any changed requirements due to the ending of NIWC support."). In support of this position, Qbase relies on our decision in *XTec, Inc.*, B-410778.3, Oct. 1, 2015, 2015 CPD ¶ 292. Our decision in *XTec, Inc.*, however, involved an agency's decision to cancel a solicitation, which necessitated the use of non-competitive procedures in order to meet the agency's immediate requirements. *Id.* at 6-9. That decision rested on the consistently-stated principle that, under the Competition in Contracting Act, noncompetitive procedures may not be used due to a lack of advance planning by contracting officials. *Id.* at 10. Here, the protest does not involve a noncompetitive procurement, and thus *XTec*, and the principles underlying that decision, do not provide support for the protester's position.

In any event, although agencies are obligated to engage in reasonable advance planning prior to conducting procurements, our Office has recognized that the specific activities associated with this requirement may vary from procurement to procurement, and that the obligation does not constitute a requirement that procurement planning be perfect, that is, completely error-free. *Id.* Here, we conclude that the agency's acquisition planning was reasonable under the circumstances.

The protest is denied.

Thomas H. Armstrong  
General Counsel