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## Decision

**Matter of:** ENPAC LLC

**File:** B-418238

**Date:** February 4, 2020

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### DIGEST

Protest alleging that agency's decision to cancel a solicitation was made solely for the purpose of avoiding a protest is denied where the agency's explanation for the decision was reasonable and there was no evidence that the explanation was pretextual.

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### DECISION

ENPAC, LLC, of Eastlake, Ohio, challenges the cancellation of request for proposals (RFP) No. SPE4A6-19-R-0566 issued by the Defense Logistics Agency for spill containment units (SCUs). The protester contends that the agency's cancellation decision lacked a reasonable basis and was undertaken for the purpose of avoiding an agency-level protest filed by Basic Concepts, Inc.

We deny the protest.

### BACKGROUND

On August 15, 2019, the agency issued the RFP. Memorandum of Law (MOL) at 1. The RFP identified four approved models of SCUs, and both ENPAC and Basic Concepts submitted timely proposals. Id. at 1-2. On September 11, Basic Concepts filed an agency-level protest alleging that its model of SCU was the only model that met the product description included in the RFP, and that the other models identified in the RFP did not actually meet the RFP's stated requirements. Id. at 2.

On October 15, 2019, the acquisition supervisor informed the contracting officer that the item solicited under the RFP was no longer required<sup>1</sup> and inquired whether the solicitation should be cancelled. Id. The acquisition supervisor then reassigned the requirement for the item to a different contracting officer so that the item could be procured as part of a larger acquisition of SCUs in various sizes, which is ongoing. Id. On October 21, the original contracting officer notified both ENPAC and Basic Concepts that the solicitation was cancelled because there was no longer a need for a long-term contract, but that there may be “tactical” buys in the future. Agency Report (AR), Tab L, Email from Contracting Officer to ENPAC and Basic Concepts, October 21, 2019. This protest followed.

## DISCUSSION

The protester alleges that the cancellation of the RFP in this case was unreasonable because the agency has not identified a rational basis for the cancellation. Protester’s Comments at 2-3. In this regard, the protester argues that the agency has not explained why consolidating the requirements is advantageous, and has additionally offered conflicting explanations for the cancellation. Id. Specifically, the protester notes that the agency initially suggested that the RFP was being cancelled because the agency was not pursuing a long-term contract for the item, but now the agency argues that the RFP was cancelled so it could be consolidated into a different long-term contract. Id. The protester suggests that the agency actually cancelled the procurement to avoid the protest filed by Basic Concepts, and that the agency’s various rationales are merely pretexts.<sup>2</sup> Id.

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. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. MedVet Dev., LLC, B-406530, June 18, 2012, 2012 CPD ¶ 196 at 3. For example, cancellation of a procurement is reasonable when the agency determines that it no longer has a requirement for the item solicited, or when the agency

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<sup>1</sup> Specifically, the supervisor told the contracting officer that the procurement was no longer part of the contracting officer’s workload, and asked if it should be cancelled. AR, Tab G, Email from Acquisition Supervisor to Contracting Officer, October 15, 2019; MOL at 2-3.

<sup>2</sup> The protester also alleges, without supporting evidence, that the cancellation was calculated to prevent it from competing for the requirement, but the record does not support that allegation. Comments at 3. The record reflects that the protester will be eligible to compete in the new consolidated procurement for several models of SCU, and the agency has indicated that it intends to add the models of SCU from the cancelled procurement to the new consolidated procurement by amendment. MOL at 3-4. The protester’s allegation that the cancellation was calculated to prevent it from competing is without merit.

discovers an existing contract for its requirement would be more advantageous to the government than continuing with the procurement. Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 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 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. 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., supra at 4.

In this case, the agency has offered a reasonable basis for the cancellation. Specifically, the agency has explained that it cancelled the solicitation in order to consolidate several similar requirements for SCUs that were being procured separately. MOL at 3-4. The agency explained that it took this approach due to workload and "internal resource" issues, which is to say that the agency viewed pursuing a larger consolidated requirement as more administratively efficient than pursuing several smaller purchases. Id. at 3.

Second, while the agency has offered inconsistent explanations concerning the cancellation, the record suggests that this was more likely a result of miscommunication rather than any attempt to deceive. Specifically, the record shows that the acquisition supervisor informed the contracting officer that the procurement was no longer a priority and asked whether it should be cancelled. AR, Tab G, Email from Acquisition Supervisor to Contracting Officer, October 15, 2019. However, the record does not show that the acquisition supervisor told the contracting officer that the requirement was being consolidated into a larger acquisition. Id. Against that background, it appears that the contracting officer erroneously concluded that the agency was no longer pursuing a long-term contract for the item. In short, while the agency's current explanation for the cancellation is different than that offered to the protester initially, we do not think the record supports the protester's contention that the agency's explanation for the cancellation is merely a pretext.

Because the agency's decision to cancel the solicitation had a reasonable basis and that basis does not appear to be pretextual, we see no basis to question the agency's decision to cancel the RFP in this case. See Lasmer Indus., Inc., supra at 3-4.

The protest is denied.

Thomas H. Armstrong  
General Counsel