



## Decision

**Matter of:** Anders Construction, Inc.

**File:** B-420717

**Date:** July 20, 2022

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Jonathan S. Forester, Esq., Riess LeMieux, LLC, for the protester.  
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Department of the Army, for the agency.  
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the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the agency's corrective action is dismissed where the protester repeats arguments from an agency-level protest rendered academic by the agency's corrective action.

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### DECISION

Anders Construction, Inc., a small business of Harvey, Louisiana, protests the issuance of an amendment to request for proposals (RFP) No. W912P821R0042, issued by the Department of the Army, Corps of Engineers (Corps) for professional diving services. The protester contends that the agency must award a contract to Anders pursuant to the solicitation as it was originally issued.

We dismiss the protest.

### BACKGROUND

The agency issued the RFP on July 30, 2021, seeking proposals for professional diving services in support of navigation, flood control, environmental projects, and other Corps missions. Req. for Dismissal attach. E, RFP amend. 7 at 1, 4. The solicitation provided for award on a lowest-priced, technically acceptable basis considering three factors: past performance, technical evaluation, and price. *Id.* at 39. Anders was among several firms that submitted proposals in response to the solicitation.

On December 2, the agency sent unsuccessful offeror letters to those offerors found technically unacceptable. Req. for Dismissal attach. D, Corrective Action Determination at 1. One offeror requested reconsideration of its unacceptability determination, alleging the agency had conducted a flawed evaluation. *Id.* The agency subsequently reevaluated all proposals and determined that Anders's proposal failed to comply with the solicitation requirements and that its proposed prices were unreasonably high. Protest exh. 4, Letter to Anders, Mar. 2, 2022, at 1-2. Accordingly, the agency reopened discussions with all offerors to address the various deficiencies in their proposals. Req. for Dismissal attach. D, Corrective Action Determination at 1. On March 3, Anders filed an agency-level protest challenging the agency's reevaluation of its proposal as technically unacceptable and the agency's decision to reopen discussions; on March 9, Anders filed a supplemental protest. *Id.*

On April 19, upon reviewing Anders's protests, the agency announced that it would take corrective action by "revising and re-issuing the solicitation and utilizing a new Source Selection Evaluation Board." Req. for Dismissal attach. C, Notice of Corrective Action at 1. In this context, the agency enumerated multiple solicitation revisions that it found necessary to clarify its requirements, including changes to solicitation section L, which contains instructions for offerors, and section M, which lists the solicitation's evaluation factors. Req. for Dismissal attach. D, Corrective Action Determination at 2. The agency also determined that it was appropriate to assemble a new source selection evaluation board. *Id.* On April 29, Anders filed this protest with our Office.

## DISCUSSION

Anders reiterates arguments raised in its agency-level protest and supplemental protest. Req. for Dismissal attach. A, Agency Protest at 1-5, 25-34. The protester takes issue with the deficiencies in its proposal that the agency identified in its March 2 letter, asserting that the Army acted in bad faith when it "manufactur[ed] deficiencies in Anders' proposal, after being deemed technically acceptable . . . creat[ing] an excuse to allow all bidders to revise their proposals." Protest at 2. The protester contests these deficiencies in its agency-level protests and reiterates those grounds here.<sup>1</sup> *Id.* at 6-10.

The agency requests that our Office dismiss Anders's protest, arguing that it undertook corrective action on April 19, after the protester had filed its agency-level protest and supplemental protest. Req. for Dismissal at 1. As noted above, the notice of corrective action stated that the agency "determined that a need existed to take corrective action by revising and re-issuing the solicitation and utilizing a new Source Selection Evaluation Board." Req. for Dismissal attach. C, Notice of Corrective Action at 1. In its

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<sup>1</sup> The protester acknowledges that it previously raised those arguments, placing them under a heading titled "Anders' Arguments Raised in its Agency Protest in Response to the Agency's Letter Dated March 2, 2022." Protest at 6.

request for dismissal, the agency reiterates that it took corrective action after determining “a need to clarify various aspects of the solicitation process.” Req. for Dismissal at 2. The agency asserts that this corrective action renders the protest academic and contends that none of the protester’s allegations indicate that the Army exceeded its broad discretion. *Id.* at 1-2. The protester responds that the agency failed to address the substance of its arguments.<sup>2</sup> Resp. to Req. for Dismissal at 1.

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure a fair and impartial competition. *MSC Indus. Direct Co., Inc.*, B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5; *Zegler, LLC*, B-410877, B-410983, Mar. 4, 2015, 2015 CPD ¶ 168 at 3. The details of implementing corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *DGC Int’l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3; *Northrop Grumman Info. Tech., Inc.*, B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3. Further, our Office has specifically stated that when an agency changes or relaxes its requirements, it must issue an amendment and give offerors an opportunity to respond. *See IBM-U.S. Federal*, B-407073.3 *et al.*, June 6, 2013, 2013 CPD ¶ 142 at 9-10; *see also Diebold Inc.*, B-404823, June 2, 2011, 2011 CPD ¶ 117 at 4.

Here, in light of the agency’s concerns regarding the clarity of the solicitation requirements, there is no basis to question the agency’s corrective action. While the protester may prefer that the agency respond to the substance of its protest allegations, the agency’s decision to take corrective action is well within its broad discretion.<sup>3</sup> Further, the protester has not presented any meaningful arguments to support its assertion that the agency’s actions were taken in bad faith. The agency’s decision to amend the solicitation, given its concerns about the solicitation’s clarity, is not a misuse of its discretion. *See Trailboss Enters., Inc.*, B-415812.2 *et al.*, May 7, 2018, 2018 CPD ¶ 171 at 12 (Government officials are presumed to act in good faith, and we will

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<sup>2</sup> The protester suggests that the agency’s corrective action is improper because it has not remedied each of Anders’s individual allegations to the protester’s satisfaction. Resp. to Req. for Dismissal at 2. This contention is misplaced because it misunderstands the purpose of the corrective action, which is to address deficiencies with the solicitation, not alleged deficiencies with the agency’s evaluation of Anders’s initial proposal. As discussed below, concerns about the agency’s evaluation of Anders’s initial proposal are rendered academic by the agency’s planned revisions to the solicitation and receipt of revised proposals.

<sup>3</sup> The protester also complains that its protest did not receive an “independent review” by a person at a level above the contracting officer because the agency determined corrective action was necessary. Protest at 2-3. Despite the protester’s disappointment that this corrective action superseded further review of its protest, the agency’s actions do not amount to an abuse of discretion.

not conclude that an agency's actions are motivated by bad faith merely because they are adverse to the protester's interests). Moreover, by amending the solicitation and obtaining revised proposals, the agency's corrective action necessarily renders academic the arguments about the initial evaluation of Anders's proposal that the protester repeats, almost verbatim, from its agency-level protest. We do not consider academic protests. *Ferris Optical*, B-403012.2, B-403012.3, Oct. 21, 2010, 2010 CPD ¶ 265 at 1-2. Accordingly, this protest ground is dismissed.

The protester also argues that the agency improperly sent the revised solicitation to all offerors, in violation of Federal Acquisition Regulation (FAR) section 15.206(c), as the solicitation was not re-issued, but amended.<sup>4</sup> Protest at 4. This section of the FAR states that “[a]mendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.” FAR 15.206(c). Anders contends that this section prohibits the agency from sending the amended solicitation to any offerors previously eliminated from consideration. Protest at 4.

Again, the agency maintains that its actions fall within the broad discretion accorded to agencies undertaking corrective action. Req. for Dismissal at 2.

Anders's complaints fail to state a valid basis for protest. It is well-settled that an agency may take corrective action to promote competition, rather than limiting the pool of potential offerors. See FAR 15.206(c); see also *Al Bazz 2000 Trading & Contracting Co., W.L.C.*, B-416622.2, Dec. 12, 2018, 2018 CPD ¶ 422 at 4. In short, Anders's protest fails to present any valid bases to challenge the agency's exercise of its broad discretion to take corrective action in response to the protest.

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel

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<sup>4</sup> Anders also argues that the agency violated FAR section 15.206(g)(5), which requires a “[d]escription of the change being made” for every amendment to a solicitation. FAR 15.206(g)(5). The amended solicitation includes text, in a box titled “DESCRIPTION OF AMENDMENT,” explaining that the amendment “[r]eplace[s the] initial solicitation and all of its amendments with the attached revised [s]olicitation.” RFP amend. 7 at 1. The protester argues that the amendment fails to include a “substantive description” of the change to the solicitation. Protest at 3. We note that this FAR section does not require a “substantive” description, but only a description. While the protester may not agree with its length, the amended solicitation includes a description of the changed solicitation.