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## Decision

**Matter of:** Firebird Analytical Solutions and Technologies, Inc.

**File:** B-419968.4; B-419968.5; B-419968.6

**Date:** September 12, 2023

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Devon Hewitt, Esq., Potomac Law Group, PLLC, for the protester.  
Michael Noyes, Esq., and Nicole Hutchinson, Esq., Department of Homeland Security, for the agency.  
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest of agency's cancellation of a solicitation following corrective action is denied where the agency's decision to move the solicited services in-house and determination that the solicitation no longer accurately reflected its requirements had a reasonable basis.

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### DECISION

Firebird Analytical Solutions and Technologies, Inc., a service-disabled veteran-owned small business of Arlington, Virginia, protests the cancellation of request for quotations (RFQ) No. 70US0920Q70090079, issued by the Department of Homeland Security (DHS), United States Secret Service, for the establishment of a blanket purchase agreement (BPA) for financial investigative support. The decision to cancel the solicitation followed the agency's partial implementation of corrective action in response to a protest by another vendor. Firebird contends that the agency had no reasonable basis to cancel the solicitation and that the cancellation was a pretext to avoid completing the corrective action and future protests.

We deny the protest.

### BACKGROUND

On July 7, 2020, the agency issued the RFQ to vendors holding General Services Administration (GSA), federal supply schedule (FSS) contracts under the Professional Services Schedule using the procedures of Federal Acquisition Regulation (FAR)

subpart 8.4. Agency Report (AR), Exh. 10, RFQ at Bates 110.<sup>1</sup> The RFQ sought program management and two types of analysis services--forensic financial investigation and support analysis, and operational research and support analysis--for the Secret Service's Asset Forfeiture Branch, which is located within the agency's Criminal Investigative Division (CID). AR, Exh. 8, Contracting Officer's Statement (COS) at Bates 103; RFQ, Performance Work Statement (PWS) at Bates 018-019. Specifically, the RFQ required that the vendor staff 11 forensic financial investigation support analysts at various field offices, and six operational research and support analysts in headquarters, for a total of 17 contract personnel. COS at Bates 103; RFQ, PWS at Bates 163.

The RFQ was set aside for small businesses and anticipated establishment of a BPA contemplating the issuance of fixed-price and labor-hour call orders, for a base year and four 1-year option periods. RFQ at Bates 111-113. Award was to be made on a best-value tradeoff basis, considering corporate experience, past performance, technical capability, and price. *Id.* at Bates 126-127.

On June 23, 2021, after evaluating quotations, the agency selected Firebird for the establishment of the BPA, concluding that its quotation represented the best value. AR, Exh. 2, BPA at Bates 008; COS at Bates 102. Thereafter, a disappointed vendor filed a protest with our Office, challenging generally the agency's evaluation and best-value tradeoff as unreasonable. Upon the filing of the protest, the agency stayed performance under the BPA. COS at Bates 102. Then, on July 26, 2021, the agency awarded an interim or "bridge" contract to Firebird--the incumbent contractor for the requirement--to continue services pending resolution of the protest. *Id.* Firebird has been providing services under this bridge contract up to the present day. *Id.*

Upon receipt of the agency report responding to its initial protest, the disappointed vendor filed a supplemental protest challenging the agency's price realism analysis and evaluation under the technical factor. After development of the supplemental protest record, the GAO attorney assigned to the protest conducted a "litigation risk" alternative dispute resolution conference with the parties on September 28, 2021. During the conference, the GAO attorney advised the parties that GAO would likely sustain two aspects of the supplemental protest--the protester's challenge to the reasonableness of the agency's price realism analysis and the agency's evaluation of the protester's quotation under the technical factor. On September 29, 2021, the agency advised our Office that it intended to take corrective action that would result in a new source selection decision, and we accordingly dismissed the protest as academic. *Ruchman & Assocs., Inc.*, B-419968, B-419968.2, Oct. 1, 2021 (unpublished decision).<sup>2</sup>

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<sup>1</sup> References herein to page numbers for the agency's exhibits are to the Bates numbering furnished by the Secret Service.

<sup>2</sup> After dismissal of the protest, the disappointed vendor filed a request with our Office, seeking a recommendation that it be reimbursed the costs of pursuing its protest grounds. *See Ruchman and Assocs., Inc.-Costs*, B-419968.3, Mar. 10, 2022, 2022 CPD ¶ 76. Additional detail regarding the prior protest is provided in that decision. *Id.*

In conducting its corrective action, the contracting officer, on October 15, 2021, requested that vendors submit a price breakout of their direct and indirect costs. COS at Bates 102. On October 21, Firebird provided the agency with a spreadsheet containing all of its direct and indirect labor costs (including fringe, profit, and overhead). *Id.* During October and November, the contracting officer conducted market research to compare hourly rates for similar jobs. *Id.* Also in November 2021, the contracting officer asked the Defense Contract Audit Agency to verify the vendors' price breakout spreadsheets. *Id.*; AR, Exh. 7, Contract Specialist Declaration at Bates 99. Thereafter, the contracting officer coordinated with a DHS pricing team for a price realism report. COS at Bates 102. A draft report was provided to the contracting officer in March 2022, but, as the agency was beginning to realize its needs with regard to the requirement were changing, a final price realism report was never completed. *Id.* The contract specialist explains that, during this time, although the agency continued to work on the reevaluation, the agency was also considering amending the solicitation and conducting a recompetition. AR, Exh. 7, Contract Specialist Declaration at Bates 99. Thereafter, CID received approval to hire a large number of new federal employees as investigative and financial analysts. COS at Bates 103.

On October 27, 2022, the agency advised Firebird via email that “[r]egarding [the RFQ], due to changes in the scope, we are going to conduct a new competitive procurement.” AR, Exh. 6.1, Email Correspondence at Bates 095; COS at Bates 103. Firebird responded, “[r]eceipt acknowledged” and asked if the government could “please share its anticipated time it expects to release the RFP?” AR, Exh. 6.1, Email Correspondence at Bates 095. The agency replied that, “[t]he Government cannot provide any further information.” *Id.* at Bates 096.

More than six months later, by email dated May 22, 2023, the contracting officer advised Firebird that, “[a]t this time I would like to thank you for all the work you have done for the United States Secret Service” and that “[p]er our initial conversations after we had put the bridge in place, the government needs have changed and we will be pursuing another route for the new need.” AR, Exh. 4, Email Correspondence at Bates 049. In response, the next day, Firebird inquired: “I gather the agency does not intend to complete the corrective action? Is that correct? And, if that is so, will the agency be cancelling the procurement/solicitation?” *Id.* at Bates 047. Also on May 23, 2023, Firebird’s outside counsel emailed agency counsel “to inquire as to the status of the agency’s corrective action[.]” *Id.* at Bates 061. Firebird’s counsel stated that her client “has heard the agency intends to reprocur from another source” and asked “[i]s this correct?” and “[d]oes that mean the agency intends to cancel the solicitation?” *Id.* Agency counsel replied that same day that he would “check on this and get back to” Firebird’s counsel. *Id.* at Bates 060.

On June 1, agency counsel advised Firebird’s counsel that “[i]n the 20 months since filing its Notice [of Corrective Action], the Agency’s needs have changed to the extent that the solicitation no longer addresses the requirement.” *Id.* at Bates 059. Agency counsel further stated: “In the near future the [Secret Service] will send your client the appropriate notices to begin the process of termination for convenience, cancel the prior

solicitation, and send the appropriate notice to GAO. It will also proceed with a procurement that will meet the government's current need." *Id.*

On June 12, in response to the agency's June 1 correspondence, Firebird filed a protest with our Office challenging the agency's decision to cancel the RFQ.

On June 28, the agency issued a notice cancelling the RFQ and terminating for convenience Firebird's bridge contract. In the notice, the agency explains that "the Agency's needs have changed" and "the solicitation no longer addresses the requirement." AR, Exh. 5, Notice of Cancellation at Bates 069. As an example, the notice states that the RFQ "listed a base period requirement . . . to staff 11 Forensic Financial Investigation Support Analysts at various Field Offices (FO) and six Operational Research and Support Analysts in [headquarters]." *Id.* (citing RFQ, Statement of Work (SOW) sec. 1.3). The notice explains that "[i]nstead of using contract labor for these positions, the Agency will be performing the work with newly hired, additional . . . government employees." *Id.* In particular, the notice states that, for the headquarters requirement, the government has already hired five new analyst employees, with eight more in the hiring process, for a total of 13 analysts. *Id.* The notice further advises that the field office contract positions will also be replaced with new, additional government employees, and that for these positions, the agency currently has the authority to hire 70 additional analysts. *Id.* The notice thus explains that "there is no longer a need for the positions specified in [the RFQ]." *Id.*

In addition, the notice states that the agency also "has a need to contract for new labor categories" that were not included in either the RFQ or the bridge contract. *Id.* To fulfill this new requirement, the notice explains that the agency "is contracting for a new strategy to satisfy the government's requirements." *Id.*

In response to the notice, Firebird filed a supplemental protest challenging the agency's decision to insource the work. The protester maintains that the agency's decision to insource is a pretext to avoid completing the promised corrective action and future protests. Supp. Protest at 2 ("[I]t appears that the Agency pivoted from adopting a strategy of corrective action to adopting a more expedient strategy of poaching Firebird personnel.").

## DISCUSSION

As noted above, Firebird protests the agency's decision to cancel the solicitation and insource the work. Before addressing the protester's arguments on the merits, we address the timeliness of the protest, which the agency challenged prior to submission of its agency report.

### Timeliness

The agency argues that the protest is untimely because it was filed on June 12, 2023, more than 10 days after Firebird was informed that the BPA "would no longer be sufficient for the [a]gency's changed needs." Req. for Dismissal at 3. In this regard, the

agency points to correspondence Firebird received on October 27, 2022, that the agency intended to “conduct a new competitive procurement.” AR, Exh. 6.1, Email Correspondence at Bates 095. The agency also points to subsequent notice Firebird received from the agency on May 22, 2023, that the agency was “pursuing another route for the new need.” AR, Exh. 3, Email Correspondence at Bates 044. The agency contends that, based on this correspondence, Firebird had notice that the BPA would no longer be sufficient for the [a]gency’s changed needs, and therefore, Firebird was required to file its protest, at the latest, within 10 days of May 22. We disagree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. The timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *The MIL Corp.*, B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 5. Under these rules, a protest such as Firebird’s, based on other than alleged improprieties in a solicitation, must be filed not later than 10 days after the protester knew or should have known of the basis for its protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

Here, the protest concerns the agency’s decision to cancel the RFQ. Although the record reflects that the agency notified Firebird on October 27, 2022, that the agency intended to “conduct a new competitive procurement,” and on May 22, 2023, that the agency was “pursuing another route for the new need,” neither of these communications articulated that the agency intended to cancel the underlying solicitation. AR, Exh. 6.1, Email Correspondence at Bates 095; Exh. 4, Email Correspondence at Bates 047. Rather, it was not until June 1, after multiple inquiries from Firebird regarding the status of the procurement, that the agency notified Firebird of its intention to cancel the solicitation. AR, Exh. 4, Email Correspondence at Bates 059.

While the agency asserts that Firebird’s protest is untimely because it was filed more than 10 days after the protester was apprised that the BPA would no longer be sufficient for the agency’s changed needs, we find that the October 27 and May 22 communications from the agency were vague and that neither definitively articulated that the agency intended to cancel the RFQ. We consider the protest to be timely because it was filed within 10 days of June 1, when Firebird was apprised of the agency’s decision to cancel the RFQ. Ten days from June 1 is June 11, a Sunday; thus, Firebird’s protest on June 12 is timely. 4 C.F.R. §§ 21.0(e), 21.2(a)(2).

### Cancellation of the Solicitation

Firebird protests the agency’s decision to cancel the solicitation. The protester maintains that the agency’s rationale for canceling the RFQ is a pretext to avoid completing the promised corrective action and that the agency is seeking to avoid future protests.<sup>3</sup> Firebird also alleges that the cancellation is unreasonable because the

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<sup>3</sup> The protester also argued that the decision to insource the requirement was unreasonable because the agency failed to comply with the requirements in Office of (continued...)

Secret Service has failed to demonstrate that in-house performance is in the agency's best interest such that it would result in cost savings and efficiencies or other intangible benefits for the agency as compared with award under the solicitation.<sup>4</sup> 1st Supp. Protest at 2; Comments & 2nd Supp. Protest at 4. Based on our review of the record, as discussed below, we find that the agency's cancellation was reasonable.<sup>5</sup>

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ. *Surgi-Textile*, B-289370, Feb. 7, 2002, 2002 CPD ¶ 38 at 2. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. *Deva & Assocs. PC*, B-309972.3, Apr. 29, 2008, 2008 CPD ¶ 89 at 3. An agency may properly cancel a solicitation no matter when the information supporting the cancellation first arises, even if it is after quotations have been submitted and evaluated, or even if it is discovered during the course of a protest. See *SEI Grp., Inc.*, B-299108, Feb. 6, 2007, 2007 CPD ¶ 35 at 3.

As a general rule, our Office does not review agency decisions to cancel procurements and instead perform the work in-house, since such decisions are a matter of executive branch policy. *Inalab Consulting, Inc.; Solutions by Design II, LLC*, B-413044 *et al.*, Aug. 4, 2016, 2016 CPD ¶ 195 at 7. However, where, as here, a protester argues that

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Management and Budget (OMB) Circular A-76, but later withdrew this argument. Supp. Comments at 2 (stating that Firebird "withdraws [its] supplemental protest allegation" concerning "compliance with OMB Circular A-76.>").

<sup>4</sup> On July 24, 2023, Firebird filed its comments and a second supplemental protest arguing for the first time that the Secret Service "did not cancel the RFQ in accordance with applicable procurement laws and regulations" because the agency had not demonstrated that "an amendment to the RFQ to reflect the [a]gency's new needs would be 'so substantial as to exceed what prospective offerors reasonably could have anticipated'" as required by FAR section 5.206(e). Comments & 2nd Supp. Protest at 2-3, 5. Although the protester raised this argument in response to the agency's memorandum of law and contracting officer's statement of facts, filed on July 12, 2023, the protester was on notice of the information providing the basis for its argument--*i.e.*, the agency's rationale for its decision to cancel the RFQ--as of June 28, 2023, when the agency provided Firebird with its Notice of Cancellation. Because the protester failed to raise its supplemental protest within 10 days of July 28, this supplemental protest issue is untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (requiring protest issues be filed within 10 days after the basis is known or should have been known); *Vigor Shipyards, Inc.*, B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5 (explaining that where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements, since our Regulations do not contemplate the piecemeal presentation or development of protest issues). Accordingly, the supplemental protest ground is dismissed.

<sup>5</sup> While we do not discuss each individual protest argument raised by the protester, we have considered them all and find that none provides a basis to sustain the protest.

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 cancelling the procurement. *Id.* Notwithstanding such scrutiny, the reasonableness standard applicable to cancellation of a solicitation remains unchanged. *Computers Universal, Inc.*, B-410790.2, Feb. 25, 2015, 2015 CPD ¶ 83 at 2-3.

Here, the agency explains that it cancelled the solicitation because it determined that in-house capability would provide the agency with more flexibility. In this regard, the contracting officer explains that, while the agency was in the process of conducting its corrective action, the agency realized that the 17 contract analysts required by the solicitation--six at headquarters and 11 at field offices--with the limited duties delineated in the original RFQ, were not enough to support CID's ever-evolving investigative mission. COS at Bates 103. As a result, the agency determined that, "[i]nstead of using contract labor for these positions, the Agency will [perform] the work with newly hired, additional . . . government employees." AR, Exh. 5, Cancellation Notice at 069. To accomplish this, the agency hired five new analyst employees, with eight more in the hiring process, for a total of 13 analysts for headquarters; for the field office contract positions, the agency states that it currently has the authority to hire 70 additional analysts. *Id.* The contracting officer further explains that these "new government-employee analysts will also have additional/different duties from those in the BPA that require new skills," and that the agency is "providing in-house training in the new skills for its employees." COS at Bates 103. The agency also notes that, unlike the contract analysts, the employee analysts provide flexibility because their duties "can easily change and adapt to evolving criminal patterns and types of investigations without the need for contract modification." Memorandum of Law (MOL) at 6.

Based on this record, we find that the agency's explanation provides a reasonable basis for cancellation. See *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); *Mastery Learning Sys.*, B-258277.2, Jan. 27, 1995, 95-1 CPD ¶ 54 at 2 (cancellation of the solicitation in order to perform the work in-house was not objectionable where the agency articulated a reasonable basis for its decision). Here, the agency explains that the number of analysts required for the requirement has increased and that these analysts will perform additional and different duties than were required by the RFQ. Performing the work in-house, the Secret Service believes, provides a way for the analysts to adapt quickly to the agency's ever-evolving investigative mission. It also provides for long-term stability and availability of workforce when compared to contractors. Supp. MOL at 5, n.3. We find no basis to question the agency's determination.

While the protester argues that the agency's decision to perform the services in-house is unreasonable because the agency failed to conduct a cost comparison to measure the relative costs of in-house versus contractor performance of the services, there is no requirement that an agency's decision to perform services in-house be based on the results of a cost comparison. *Mastery Learning, supra*. Further, although the protester challenges the cancellation as unreasonable because, in the protester's view, the

record lacks contemporaneous documentation to support the agency's decision, our Office has stated that a new or additional rationale justifying the cancellation of a solicitation provided by an agency during the development of a protest is acceptable so long as it would have supported cancellation had it been advanced originally.<sup>6</sup> See *Peterson-Nunez Joint Venture*, B-258788, Feb. 13, 1995, 95-1 CPD ¶ 73 at 5. In this regard, as previously referenced, an agency may properly cancel a solicitation no matter when the information supporting the cancellation first arises, even if it is not until after quotations have been submitted and evaluated, or even if discovered during the course of a protest. See *SEI Grp., Inc.*, *supra* at 9. The protester's arguments here provide no basis to sustain the protest.

Lastly, nothing in the record supports Firebird's assertion that the cancellation was a pretext to avoid completing the corrective action or for fear of future protests. Government officials are presumed to act in good faith and, where a protester contends that contracting officials are motivated by bad faith, it must provide convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference and supposition. *Inalab Consulting*, *supra* at 5. Although the agency did not realize that its requirements had changed or that it had obtained authority to hire new analyst employees until after the procurement was protested and the agency was well into conducting corrective action, the record does not provide convincing proof that the agency acted in bad faith.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>6</sup> The protester also asserts that there are inconsistencies in the record, such as between the declarations provided by the contracting officer and contract specialist in response to the protest regarding when the agency's need changed. Comments & 2nd Supp. Protest at 3-5; Supp. Comments at 3-4; *compare* AR, Exh. 7, Contract Specialist Declaration at Bates 099 (stating that, after the agency's pricing team issued a draft price realism report, the agency continued to work on the reevaluation and was "discussing a possible amendment to the solicitation and a recompetete," but that it was not until Spring 2023 that the agency determined that the RFQ no longer reflected the needs of the agency), *with* COS at Bates 102 (stating that by the time the draft price realism report was prepared in March 2022, "the requirement had changed sufficiently that a final report was not needed."). We do not view these statements as conflicting. Both indicate that the agency had concerns beginning in March 2022 that the agency's needs had changed; this fact is not inconsistent with the statement that the agency also continued to work on the reevaluation.