

## Decision

**Matter of:** FreeAlliance.com, Inc.

**File:** B-420351

**Date:** December 10, 2021

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W. Brad English, Esq., Jon D. Levin, Esq., Emily J. Chancey, Esq., J. Dale Gipson, Esq., and Joshua B. Duvall, Esq., Maynard Cooper & Gale PC, for the protester. Captain Michael Brown, Esq., Department of the Army, for the agency. Michael P. Grogan, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

GAO lacks jurisdiction to hear challenge to protester's elimination from task order competition where the government's cost estimate and all submitted proposals fall below \$25 million, and where the protester has not alleged that the task order increases the scope, period, or maximum value of the contract under which the task order will be issued.

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### DECISION

FreeAlliance.com, Inc., a small business of McLean, Virginia, protests its elimination from the competition under request for proposals (RFP) No. W9133L22R4000, issued by the National Guard Bureau (NGB), for software development services. The protester contends the agency's evaluation of its past performance, and its decision to exclude FreeAlliance's proposal from further consideration, were unreasonable.

We dismiss the protest.

NGB issued the solicitation on October 12, 2021, pursuant to the procedures in Federal Acquisition Regulation (FAR) subpart 16.5, to firms holding the Army's Computer Hardware, Enterprise Software and Solutions (CHESS) Information Technology Enterprise Solutions-3 Services (ITES 3-S) indefinite-delivery, indefinite-quantity (IDIQ) contracts. Req. for Dismissal at 2. The solicitation provided for a two-phase evaluation process. First, the agency would determine a proposal's viability based on an evaluation of an offeror's work experience and adverse past performance. *Id.*, ex. 1 at 62-64. Second, proposals deemed viable would be evaluated across three factors: staffing approach; technical approach; and price. *Id.* at 64. On November 3, NGB determined that FreeAlliance's proposal was not viable, based primarily on the agency's

review of relevant adverse past performance. *Id.*, exh. 6 at 1. On November 9, FreeAlliance filed this protest, challenging the agency's determination that its proposal was not viable.

Under the Federal Acquisition and Streamlining Act of 1994, as modified by the National Defense Authorization Act of Fiscal Year 2017, our Office is authorized to hear protests of task orders, or the proposed issuance of task orders, that are issued under IDIQ contracts established within the Department of Defense, where the task order is valued in excess of \$25 million, or where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the task order is issued. 10 U.S.C. § 2304c(e); 4 C.F.R. § 21.5(l).

We conclude that our Office lacks the necessary jurisdiction to consider FreeAlliance's protest. NGB has yet to issue a task order under this solicitation and is currently evaluating proposals; however, we note that the independent government cost estimate for this order falls below \$25 million. Req. for Dismissal, exh. 5. Moreover, all of the proposals submitted in response to the RFP are priced below \$25 million. Req. for Dismissal, Dec. 2, 2021. These factors support our conclusion that the value of the task order falls below \$25 million. See *ICI Servs., Inc.*, B-409231.2, Apr. 23, 2014, 2014 CPD ¶ 132 at 3 n.3; *Adams and Assocs*, B-417534, Jun. 4, 2019, 2019 CPD ¶ 208 at 4 n.2. Accordingly, because the protester has not alleged that the task order at issue here increases the scope, period, or maximum value of the contract under which the task order is issued, and because the value of this task order does not exceed \$25 million, our Office lacks the statutory jurisdiction to consider the protest.

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel