



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Decision

Matter of: Hatalom Corporation

File: B-421803.5

Date: December 13, 2024

David S. Black, Esq., and Gregory R. Hallmark, Esq., Holland & Knight LLP, for the protester.

Jonathan A. Hardage, Esq., and Branden M. Smith, Esq., Department of the Army, for the agency.

Michael P. Grogan, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's corrective action, which included cancelling the solicitation, is denied where the agency had at least one reasonable basis to cancel the solicitation.

DECISION

Hatalom Corporation, a small business of Orlando, Florida, protests the Department of the Army, Army Materiel Command's (AMC) decision to cancel request for proposals (RFP) No. W900KK-23-R-0016, issued for medical instructor operator support. The Army decided to cancel the solicitation as part of corrective action taken in response to a protest filed by Advanced Computer Learning Company, LLC (ACLC), a small business of Orlando, Florida. The protester argues that the agency lacks a reasonable basis to cancel the solicitation.

We deny the protest.

BACKGROUND

The agency issued the solicitation on February 13, 2023, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15. Agency Report (AR), Tab 8, Conformed

RFP at 1.¹ The solicitation contemplated the award of a contract, with fixed-price and cost-reimbursement contract line items (CLINs), with a two-month phase-in period, a six-month base period of performance, and four, 1-year option periods. *Id.* at 2, 70. Through this procurement, AMC sought contractor training and instruction services for AMC's Medical Simulation Training Center combat medic training program. AR, Tab 10, Performance Work Statement (PWS) at 6. The solicitation advised that award would be made on a lowest-price, technically-acceptable (LPTA) basis, considering the following non-price factors: (1) qualified personnel; (2) phase-in; (3) corporate experience; and (4) past performance. AR, Tab 8, RFP at 81. Total evaluated price would be the sum of all fixed-price CLINs and would be evaluated for completeness, balance, and reasonableness. *Id.* at 85.

On June 23, 2023, AMC made award to ACLC. Joint Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 8. On July 11, Hatalom filed a protest with our Office challenging the agency's evaluation of Hatalom's proposed pricing as unbalanced. Our Office dismissed Hatalom's protest as academic on July 25, based on the agency's proposed corrective action, which included reevaluating Hatalom's proposal. *Hatalom Corp.*, B-421803, Jul. 25, 2023 (unpublished decision).

Following the implementation of its corrective action, AMC reaffirmed its award to ACLC. Hatalom filed a second protest with our Office, arguing AMC impermissibly conducted a price realism evaluation, and engaged in a flawed evaluation of proposals with respect to the Service Contract Act's (SCA) applicable wage determinations. Again, our Office dismissed Hatalom's protest as academic, based on the agency's proposed corrective action, which included undertaking a reevaluation of Hatalom's proposal and issuing a new award decision. *Hatalom Corp.*, B-421803.2, Mar. 12, 2024 (unpublished decision).

AMC, after completing its corrective action, selected Hatalom for award. On June 13, 2024, ACLC filed a size protest with the Small Business Administration (SBA), challenging Hatalom's small business status under the relevant North American Industry Classification System (NAICS) code for this procurement. On July 18, the SBA determined that Hatalom's size status was small under the applicable NAICS code. AMC subsequently awarded the contract to Hatalom.

On August 26, ACLC filed a protest with our Office challenging the agency's award decision. Specifically, ACLC argued the agency: (a) unreasonably evaluated Hatalom's price proposal; (b) failed to consider that Hatalom had an unmitigated organizational conflict of interest; (c) unreasonably evaluated Hatalom's technical proposal; and (d) failed to staff the evaluation panel with individuals with the requisite technical expertise to properly evaluate proposals. Our Office dismissed ACLC's protest as academic, where the agency explained it would take corrective action, to include terminating the contract awarded to Hatalom, cancelling the solicitation, revisiting and

¹ All citations to the agency's report are to the Adobe PDF document page numbers, and all citations to the RFP are to the conformed version, unless otherwise noted.

potentially modifying the agency's requirements, and issuing a new solicitation. *Advanced Computer Learning Company, LLC*, B-421803.3, B-421803.4, Sep. 17, 2024 (unpublished decision). Hatalom filed the instant protest on September 20.

DISCUSSION

Hatalom contends the agency's decision, as part of its corrective action, to cancel the solicitation lacks a reasonable basis. Protest at 1. In this regard, Hatalom argues AMC's stated rationale for the cancellation, as elucidated through the development of this protest, is "convoluted," contrary to law and regulation, and is wholly unreasonable. Comments at 2. In response, AMC contends that--as was developed contemporaneously with the agency's decision to take corrective action in response to ACLC's protest--it had several reasonable bases to cancel the solicitation.

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. *Quotient, Inc.*, B-416473.4, B-416473.5, March 12, 2019, 2019 CPD ¶ 106 at 3. 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. Moreover, a contracting agency has broad discretion in deciding whether to cancel a solicitation, and need only establish a reasonable basis for doing so. *KNAPP Logistics Automation, Inc.--Protest & Costs*, B-404887.2, B-404887.3, July 27, 2011, 2011 CPD ¶ 141 at 3. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. *Logistics Solutions Group, Inc.*, B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 3. In addition, 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 proposals have been submitted and evaluated, after a contract has been awarded or, as here, after the filing of a protest against the award. See *Bluehorse*, B-412494, B-412494.2, Feb. 26, 2016, 2016 CPD ¶ 64 at 5.

Concomitant with the decision to take corrective action in response to ACLC's protest, the contracting officer prepared a memorandum explaining her rationale for why cancellation of the solicitation was warranted. AR, Tab 109, Memorandum for Record (MFR) at 1. The contracting officer identified multiple reasons for cancellation, and explained that AMC, by cancelling and reissuing the solicitation, "wants to ensure that all of its requirements are sufficiently clear in the RFP so that all Offerors understand them upfront when preparing their proposals and can meaningfully and intelligently compete for the award." *Id.*

First, she identified procedural techniques not included in the solicitation that could have "been utilized to refine the evaluation criteria and sort the field of Offerors[.]" *Id.* at 2. The contracting officer expressly referenced the failure to include a price realism evaluation in the RFP, which, in her view, "could have been utilized to encourage Offerors to submit proposals that contains [their] best terms from a technical and price

perspective and to ensure that the Offerors' proposed prices reflected a sufficient understanding of the [agency's] requirements." *Id.* Further, the contracting officer provided that the agency failed to incorporate language into the solicitation to ensure contractor compliance with the SCA and applicable collective bargaining agreements. *Id.* She also identified that, as evidenced by ACLC's supplemental protest allegations, "the RFP evaluation criteria and PWS certification requirements were not sufficiently clear[.]" *Id.*

In addition to these enumerated reasons, the contracting officer cited the truncated period of performance resulting from multiple protests before GAO and SBA as an important consideration for AMC's corrective action:

Because of potential shifts in originally anticipated performance dates from the RFP, this would still likely mean that numerous aspects of the PWS would need to be bilaterally modified or descoped. Even if these issues are fixed through modifications, the Offerors (including both Hatalom and ACLC) based their proposed pricing on the original projected performance dates from 2023 and have not been able to update their proposed pricing since 2023. This significant passage of time since the receipt of proposals creates a legitimate concern on behalf of [AMC] that the pricing submitted by the Offerors as part of their proposals in 2023 are no longer accurate or valid for any updated periods of performance.

Id. Moreover, AMC cited a potential lack of mutual understanding between the agency and Hatalom concerning key terms and conditions in the awarded contract, as well as AMC's apparent inability to reach agreement on desired modifications to the contract. *Id.*

The contracting officer concluded that, "[a]fter reviewing the allegations of the latest protests and considering all of the circumstances surrounding this procurement to date, the Contracting Officer believes that corrective action is both necessary and in the best interest of the Government" and "will allow for the strengthening of the RFP language and the re-solicitation of the effort, with the aim of obtaining a fair, reasonable, and realistically priced proposal that can lead to a mutually agreed-upon and enforceable contract award." *Id.* at 2-3.

In examining the reasonableness of the agency's decision to cancel the solicitation, we need not address whether every proffered reason is, in and of itself, reasonable; instead, AMC need only advance one reasonable justification. *Pemco Aeroplex, Inc., Aero Corp.*, B-275587.9 *et al.*, Jun. 29, 1998, 98-2 CPD ¶ 17 at 12. Based on the record, and considering the broad discretion afforded to contracting agencies, we find reasonable AMC's corrective action, including the agency's cancellation of the solicitation.

As noted above, one concern (of many) identified by the contracting officer related to the period of performance remaining on the contract. AR, Tab 109, MFR at 2;

COS/MOL at 21-22. That is, with only approximately three and half years of performance remaining, “numerous aspects of the PWS would need to be bilaterally modified or descoped.” *Id.* Moreover, even if a modification could be agreed to by the parties, the contracting officer notes the “significant passage of time since the receipt of proposals creates a legitimate concern on behalf of [AMC] that the pricing submitted by the Offerors as part of their proposals in 2023 are no longer accurate[.]” *Id.*

Bolstering the contracting officer’s concerns is the position Hatalom took following the award of the contract. The next business day following the agency’s notice of award, the protester provided a letter to AMC explaining “there are several issues that require attention.” AR, Tab 120, Hatalom Letter, Aug. 1, 2024, at 1. As relevant here, Hatalom explained that given the delay in the award of the contract, the protester “should have been permitted to update the proposal but was not afforded the opportunity.” *Id.* Moreover, the protester explained it would potentially seek reimbursement from the agency for costs associated with that delay. *Id.* (“Hatalom reserves the right to submit a Request for Equitable Adjustment (REA) if any cost impacts are found in a timely manner due to the extended delay.”); *id.* at 2 (concerning adjustments to annual wage determinations and collective bargaining agreement increases, “[w]e reserve the right to submit a REA both during Phase-In for anticipated price adjustments and/or other costs associated with the significantly delayed schedule caused by the 10-month lapse[.]”).

Hatalom offers no compelling rebuttal in response to the contracting officer’s concerns. Comments at 8-9. First, the protester asserts that a shortened period of performance “is a regular occurrence in government contracts[,]” and agencies “routinely award the contract with the same periods of performance, but starting after the postponed date of award.” *Id.* at 8. Even assuming, for the sake of argument, this is a regular occurrence in other procurements, Hatalom’s contention in no way addresses the reasonableness of AMC’s concern regarding the need for either a bilateral modification to extend the period of performance or descoping of the PWS, or that the awardee’s pricing (largely a function of labor hours) would likely be inaccurate and stale. Indeed, the contracting officer’s concern was rooted at least in part in this exact position taken contemporaneously by Hatalom.²

Second, Hatalom points to the awarded contract to suggest AMC “actually did update the periods of performance, as it had the phase-in period beginning on July 29, 2024--

² We highlight that while the resulting contract will primarily include fixed-price CLINs, for which the contractor will bear the risk of inadequate proposed fixed-prices, one of the bases for which AMC sought to cancel and reissue the solicitation concerned the original RFP’s failure to include a price realism requirement to address potential performance risks associated with low pricing. See AR, Tab 109, MFR at 2 (“A price realism analysis could have been utilized to encourage Offerors to submit proposals that contains its best terms from a technical and price perspective and to ensure that the Offerors’ proposed prices reflected a sufficient understanding of the [agency’s] requirements.”); *id.* at 3 (explaining the new solicitation would “contain a requirement for a price realism analysis”).

instead of May 30, 2023, as originally anticipated--and included a six-month base period, four option years and a six-month option to extend thereafter.” *Id.* at 9; see AR, Tab 119, Hatalom Awarded Contract at 24. Several facts in the record undercut the protester’s reliance on this change. As an initial matter, the contract is ambiguous as to the start date of performance, listing the start of the initial phase-in period as both June 29, 2023, and July 29, 2024. AR, Tab 119, Hatalom Awarded Contract at 24. Moreover, Hatalom recognized this discrepancy, and attempted to unilaterally modify the awarded contract by extending the phase-in start. AR, Tab 120, Hatalom Letter, Aug. 1, 2024, at 1.

Finally, even assuming AMC would agree to the modified period of performance, the contracting officer’s concern regarding pricing remained a reasonable concern with the awarded contract. AR, Tab 109, MFR at 2. Indeed, as explained above, it was Hatalom that argued that its pricing was inadequate, where the firm complained that given the significant passage of time from proposal submission, and the fact that its proposal had expired nearly 10 months before award, the firm should have been afforded the opportunity to revise its pricing and reserved the right to file an REA. *Id.* Thus, it appears that both parties believed that “the pricing submitted by the Offerors as part of their proposals in 2023 are no longer accurate or valid for any updated periods of performance.” AR, Tab 109, MFR at 2. Accordingly, we have no basis to question the reasonableness of the agency’s decision to cancel the solicitation.

The protest is denied.

Edda Emmanuelli Perez
General Counsel