



DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: Development InfoStructure, LLC--d/b/a Devis

File: B-422776.2

Date: September 15, 2025

Lyle F. Hedgecock, Esq., Lauren S. Fleming, Esq., and Cash W. Carter, Esq., Miles & Stockbridge P.C., for the protester.

Samuel S. Finnerty, Esq., Katherine B. Burrows, Esq., Abigail H. Finan, Esq., and Kristine E. Cralle, Esq., Piliero Mazza, PLLC, for Credence Management Solutions, LLC, the intervenor.

Tudo N. Pham, Esq., Department of State, for the agency.

Uri R. Yoo, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's decision to amend the solicitation, in the face of changed requirements, is denied where the agency followed applicable Federal Supply Schedule (FSS) procedures.
 2. Protest challenging agency's failure to conduct additional market research and analysis in deciding not to set the procurement aside for small business concerns is dismissed for failure to state a valid basis of protest where set-asides conducted under the FSS program are discretionary.
-

DECISION

Development InfoStructure, LLC, doing business as Devis, a small business of Arlington, Virginia, protests the issuance of a task order to Credence Management Solutions, LLC, of Vienna, Virginia, under request for quotations (RFQ) No. 19AQMM24Q0080, issued by the Department of State for management and operations support for the agency's refugee processing centers. Devis challenges the agency's decision to proceed with the procurement on an unrestricted basis, arguing that a significant reduction in the requirement necessitated that the agency cancel and reissue the solicitation after conducting additional market research and analysis to determine whether the reduced requirement should be set aside for small business concerns.

We deny the protest.

BACKGROUND

From March to November of 2023, the agency conducted market research seeking a contractor to provide technology, business, and operations services to support the Bureau of Population, Refugees, and Migration (PRM) in the management and operation of the agency's refugee processing center. Contracting Officer's Statement (COS) at 2; Agency Report (AR), Tab 51, Market Research Report, Nov. 3, 2023, at 2; see AR, Tab 10, Initial RFQ, attach. 1, Performance Work Statement (PWS) at 2. The agency sought a firm with the "requisite technical qualifications, experience, and business capacity . . . to meet the objectives described in the [draft] PWS." AR, Tab 51, Market Research Report, Nov. 3, 2023, at 2. These objectives encompass the operational components of refugee case processing, information technology (IT) infrastructure management and network support, maintenance and enhancement of IT systems, data analytics capabilities and services, help desk services, cybersecurity compliance, and day-to-day administrative and facilities services to support refugee processing center office operations. *Id.*; AR, Tab 10, Initial RFQ, attach. 1, PWS at 2.

The market research included, among other things, the issuance of requests for information (RFI) and sources sought notices--through the General Services Administration's (GSA) market research as a service (MRAS) and System for Award Management (SAM.gov)--to "gauge industry interest, capabilities, and qualifications of interested respondents to meet" the PWS requirements. AR, Tab 51, Market Research Report, Nov. 3, 2023, at 1. The RFIs included a draft PWS and a capability questionnaire. *Id.* at 3; see *generally*, AR, Tab 29, MRAS Intake Technical Questions; AR, Tab 35, Refugee Processing Center RFI. In response to the RFI posted through MRAS, the agency received responses from 56 firms, 41 of which were certified as small businesses under the applicable \$30 million size standard designated for North American Industry Classification System code 541511. AR, Tab 51, Market Research Report, Nov. 3, 2023, at 3-5. Further, the agency found that, of the 56 firms, 49 of them held GSA Multiple Award Schedule (MAS) IT schedule contracts. *Id.* at 4. In response to the RFI posted on SAM.gov, the agency received responses from 13 firms, seven of which were certified as small businesses. *Id.* at 11-12.

The agency assessed each vendor's capability statement in accordance with the predetermined criteria of relevant technical experience and business capacity. *Id.* at 2. For technical experience, the agency sought clear evidence of experience performing work similar to the scope of work defined in the draft PWS, including nine specific functional areas. *Id.* For business capacity, the agency sought indications of experience performing similar work at the same scale or size and complexity, and the corporate infrastructure necessary to be a prime contractor on a contract with an annual value of at least \$30 million. *Id.*

Based on its review of these capability statements, the agency concluded that the requirement was not a viable candidate for a small business set-aside. *Id.* at 14. In this

regard, the agency found that none of the small businesses demonstrated “the technical capability to execute all 9 functional areas of the PRM scope of work solely and resourcefully.” *Id.* at 5, 12. The agency also found that none of the responses from small businesses “demonstrated the business capacity to manage a contract with an annual value of more than a fraction of the \$30 [million].” *Id.* at 5. Based on these findings, the agency determined that the requirements should be solicited on an unrestricted basis to holders of the GSA MAS IT schedule contract. *Id.* at 14-15. After several weeks of discussions and analyses with the agency’s Office of Small and Disadvantaged Business Utilization (OSDBU) and with the Small Business Administration (SBA), the acquisition was approved to proceed on an unrestricted basis, provided that the solicitation include an evaluation factor requiring small business participation of at least 30 percent. Memorandum of Law (MOL) at 6-14; AR, Tab 109, Form DS-1910, Small Business Agency Review at 6-7; see AR, Tabs 83-106, Intra-agency Emails on Discussions with OSDBU and SBA.

On July 11, 2024, the agency issued the RFQ on an unrestricted basis to 13 holders of the GSA MAS IT schedule contracts, including Devis and Credence, using the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4.¹ COS at 2; AR, Tab 13, Initial RFQ, attach. 4, Instructions at 1. The solicitation contemplated the issuance of one task order with fixed-price and time-and-materials contract line item numbers, with a 1-year base period and four 1-year option periods. AR, Tab 3, Initial RFQ at 3-7.

By the solicitation closing date of September 30, the agency received quotations from seven vendors, including Credence and [DELETED]. COS at 2, 4. [DELETED]’s quotation proposed to use Devis as [DELETED]’s small business subcontractor. *Id.* at 4.

On January 20, 2025, before award was made under the solicitation, Executive Orders 14163 and 14169 were issued. Executive Order 14163 suspended the entry of refugees into the United States under the U.S. Refugee Admission Program (USRAP), pending the President’s determination that the resumption of USRAP would be in the interest of the United States based on a review of reports from the Secretary of Homeland Security within 90 days of the order and every 90 days thereafter. Executive Order No. 14163 at §§ 3, 4, 90 Fed. Reg. 1459, 1460 (Jan. 20, 2025). Executive Order 14169 required a “90-day pause in United States foreign development assistance for assessment of programmatic efficiencies and consistency with United States foreign policy,” which “pause[d] new obligations and disbursements of development assistance funds to . . . contractors pending reviews . . . to be conducted within 90 days of [the] order.” Executive Order No. 14169 at § 3(a), 90 Fed. Reg. 1619, 1619 (Jan. 20, 2025).

¹ On July 25, prior to the initial solicitation closing date, Devis filed a protest with our Office challenging the agency’s decision not to set aside the requirement for small businesses. MOL at 16. After the filing of the agency report, and prior to filing comments, Devis withdrew its protest. *Id.* at 17.

Executive Order 14169 included a provision under which the Secretary of State may waive the pause for specific programs. *Id.* at § 3(e).

Because the instant procurement, as well as the incumbent effort being performed by Devis, were funded from development assistance funds, the program office requested and obtained emergency waivers to continue the incumbent contract with reduced staffing and to proceed with award under the RFQ with a reduced estimated value. COS at 2-3; see AR, Tab 161, Foreign Assistance Director Action Memorandum at 1-4, 7; AR, Tab 163, Email from Contracting Officer Representative (COR) to Contracting Officer (CO) at 1-3. To comply with the conditions of the waiver, the agency modified the incumbent contract by reducing the required workload by 55 percent to “allow critical IT services, operations, and maintenance to continue while significantly decreasing personnel dedicated to refugee case processing.” COS at 3; AR, Tab 163, Email from COR to CO at 1. The agency also amended the instant solicitation, reducing overall staffing for the requirement by 55 percent and designating one of the nine functional areas as inactive. *Id.* at 3; see AR, Tab 150, RFQ amend. 3, attach. 1, PWS § C.3.9 at 33; see *generally*, AR, Tab 152, RFQ amend. 3, app. C, Pricing Sheet. The solicitation amendment was sent to the seven vendors that submitted quotations in response to the initial RFQ. COS at 4.

Before issuing the amendment, the contracting officer made a determination to “maintain the current RFQ as unrestricted, despite a[] 55 [percent] reduction in level of effort requested by the Program Office.” AR, Tab 147, Determination to Proceed with Unrestricted Competition at 1. In reaching this decision, the contracting officer reviewed the original market research material in light of the reduced requirements and concluded that “the same circumstances that guided the initial set aside determination are still in place.” *Id.* at 2-3. In this regard, the contracting officer noted that the market research showed that “none of the 21 small businesses responding to the [RFI] to determine set aside status demonstrated the technical capability to perform the full breadth of the PWS” and that “[r]emoving one task (temporarily) from the scope does not change the findings for any of these small businesses.” *Id.* at 2. The contracting officer also found that the program “requires the capability to rapidly scale up due to shifting political priorities,” and that even with the current scope reduction, “the program still needs a business capable of scaling up to a contract size of \$30M annually.” *Id.* The contracting officer informed the OSDDBU of this decision, and the OSDDBU concurred. AR, Tab 165, Email from OSDDBU.

All seven vendors submitted quotation revisions and, after completing its evaluations, the agency selected Credence’s quotation for award. Subsequently, Devis filed this protest with our office.

DISCUSSION

Devis primarily challenges the agency’s decision to proceed with the procurement on an unrestricted basis notwithstanding a significant change in the agency’s requirements. Specifically, the protester contends that the agency violated the statutory requirement

for full and open competition under the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 3301, when it amended the solicitation to reflect a significant change in its requirements instead of cancelling the solicitation and resoliciting for the changed requirements. The protester also argues that the agency unreasonably failed to conduct additional market research, and a new set-aside analysis, despite this significant reduction in the agency's requirements. For the reasons discussed below, we find no basis to sustain the protest.

Timeliness

As a preliminary matter, the agency and Credence both request dismissal of the protest, arguing that Devis's post-award protest constitutes an untimely challenge to the terms of the RFQ. Dismissal Req. at 3-5; Intervenor's Resp. to Dismissal Req. at 2-3. The agency and the intervenor contend that the protester knew or should have known about the agency's decision not to cancel the solicitation and resolicit the changed requirement when the agency issued an RFQ amendment to [DELETED], Devis's teaming partner, reflecting State's reduced requirements. *Id.*

Our Bid Protest Regulations require that, generally, a protest based on alleged improprieties in a solicitation, including challenges to an agency's decision not to set aside a procurement for small businesses, must be filed prior to the closing date for the receipt of quotations. 4 C.F.R. § 21.2(a)(1); *Candor Solutions, LLC*, B-418682.2, Sept. 15, 2020, 2020 CPD ¶ 297 at 6 n.3. When an agency's actions preclude the possibility of filing a timely challenge to the terms of the solicitation, however, our Office will consider timely a protest of the solicitation terms filed not later than 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2); see *ITility, LLC*, B-419167, Dec. 23, 2020, 2020 CPD ¶ 412 at 7.

Here, the record reflects that the agency issued the third solicitation amendment to only those vendors that submitted quotations, including to Devis's teaming partner [DELETED], but did not provide it directly to Devis, which had not submitted its own quotation. COS at 2. The agency and the intervenor contend, however, that Devis was aware of the amendment through its role as [DELETED]'s proposed subcontractor. Dismissal Req. at 5; Intervenor's Resp. to Dismissal Req. at 2-3. In this regard, Credence provided a declaration from its [DELETED], attesting to a conversation with an executive at [DELETED] where the [DELETED] executive confirmed that Devis was "heavily involved in the preparation of [DELETED]'s revised proposal in response to Amendment 3." Intervenor's Resp. to Dismissal Req., exh. A, Decl. of Credence's [DELETED] at ¶ 9. The declarant also stated that he was "aware that the Devis [DELETED] had knowledge of the reduction in [full-time equivalents] in Amendment 3" based on discussions with members of Devis's key personnel on the incumbent contract. *Id.* at ¶ 10.

The protester, however, denies any such knowledge of the amendment prior to the agency's issuance of the task order to Credence. Protester's Resp. to Dismissal Req., exh. 1, Decl. of Devis's [DELETED] at ¶¶ 3-5. Devis's [DELETED] declares that, rather

than being “heavily involved” in the preparation of [DELETED]’s quotation revision, Devis had no involvement in preparing [DELETED]’s quotation beyond providing its labor rates and incumbent contract information for the initial quotation submission. *Id.* at ¶ 3. The declarant further stated that Devis had no knowledge of any reduction in the solicitation’s scope of work until the agency selected Credence’s quotation for award, and, moreover, did not find out about amendment 3 until the agency filed its dismissal request. *Id.* at ¶¶ 4-5.

On this record, we find no basis to conclude that Devis knew or should have known about the change to the solicitation’s requirements before the agency issued the task order to Credence. Although the agency provided the amendment to [DELETED], nothing in the record, other than accounts by self-interested parties of conversations with third parties, supports that [DELETED] provided the amendment to Devis. We also find nothing in the record showing that the protester should be charged as having constructive notice of the solicitation amendment, as the solicitation was not posted on a government-wide point of entry designated for publication of solicitations (such as SAM.gov), and nothing in the solicitation or in applicable procurement laws or regulations required [DELETED] to provide the amendment to its proposed subcontractor. In this regard, we resolve doubts over issues of timeliness in favor of protesters. *See Sigmatech, Inc.*, B-296401, Aug. 10, 2005, 2005 CPD ¶ 156 at 5. Therefore, we find that the protest was timely filed within 10 days of when Devis knew or reasonably should have known of the agency’s decision to proceed with the unrestricted procurement notwithstanding the scope reduction for the requirement.

Competition Requirement

The protester first contends that the agency erred in amending the solicitation, rather than cancelling the RFQ and issuing a new solicitation in light of the agency’s needs having “drastically and permanently diminished for the foreseeable future.” Protest at 20-24; Comments at 3-8. In this regard, the protester argues that the scope reduction reflected in amendment 3 was so significant that the agency violated CICA by not reopening the competition *via* a new solicitation. *Id.* We disagree.

As noted, the agency conducted this procurement as an FSS acquisition under FAR subpart 8.4. The FSS program provides federal agencies with a simplified process for obtaining commonly used commercial supplies and services. FAR 8.401(a). The FSS procedures, although streamlined, satisfy the requirements for full and open competition. 10 U.S.C. § 2302(2)(C); FAR 8.404(a); *CC&C Management Services, LLC*, B-417594, Aug. 28, 2019, 2019 CPD ¶ 308 at 3. Our Office has explained that following the rules established for using FSS contracts satisfies CICA’s competition requirements. 41 U.S.C. § 152(3); FAR 6.102(d)(3); *Phoenix Environmental Design, Inc.*, B-422547, July 29, 2024, 2024 CPD ¶ 169 at 4.

While the protester argues that the reduction in the requirement was so significant as to obligate the agency to reopen the competition beyond the seven vendors that submitted quotations in response to the initial solicitation, we find nothing in any applicable

procurement law or regulation requiring such a recompetition. In this regard, when placing an FSS order exceeding the simplified acquisition threshold, agencies are required to either post the RFQ on eBuy or provide the RFQ to “as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements.” FAR 8.405-2(c)(3)(iii)(B).

Here, the record shows that, after extensive market research, the agency initially issued the RFQ to 13 vendors holding the applicable FSS contract, including Devis, and then received seven quotations in response. COS at 2, 4. Devis chose not to submit its own quotation but instead participated in the competition as [DELETED]’s small business subcontractor. *Id.* at 3. When the agency’s needs changed, the agency issued to the seven existing vendors an amendment that reduced overall staffing and temporarily inactivated one of the nine functional areas. *Id.* at 3, 4. Since the seven vendors had submitted quotations for the original requirement--which called for a greater degree of effort to perform--we find it reasonable for the agency to have expected it would receive quotations “from at least three contractors that can fulfill the requirements” for the amended requirement. See FAR 8.405-2(c)(3)(iii)(B). Indeed, the agency received revised quotations from all seven vendors. See COS at 4. Under these circumstances, we find that the agency complied with the applicable FSS requirement.²

The protester additionally contends that the requirements of FAR section 15.206³ are applicable here as a “broader imperative[] of CICA that appl[ies] to all procurements, including orders off of GSA’s Multiple Award Schedule[s].” Protest at 22. We find this argument unavailing. In this regard, Devis’s reliance on the negotiated procurement

² In fact, even if the agency had canceled the solicitation and resolicited for its changed requirements, nothing in the FSS procedures required the agency to issue a solicitation to the protester. See, e.g., *Phoenix Environmental Design, Inc.*, *supra* at 4 (denying protest challenging an agency’s decision to not issue a solicitation to the protester where the solicitation was issued to at least three schedule contractors in accordance with FAR subpart 8.4 procedures); *Lockmasters Security Institute, Inc.*, B-299456, May 21, 2007, 2007 CPD ¶ 105 at 6 (denying protest challenging an agency’s failure to issue solicitation to the incumbent contractor because “[u]nder the FSS, however, a vendor has no legal expectation or entitlement to be one of those vendors solicited”).

³ Section 15.206(e) of the FAR provides as follows:

(e) If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

procedures of FAR part 15 (and our decisions discussing negotiated procurements) is misplaced where the procurement at issue was conducted under the FSS procedures of FAR subpart 8.4. For an FSS procurement, the agency was simply obligated to follow the procedures prescribed in FAR subpart 8.4.

In sum, we find that the agency followed applicable FSS procedures by soliciting schedule vendors for the amended requirement, “consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements.” FAR 8.405-2(c)(3)(iii)(B); see also, FAR 8.404(a) (“[Blanket purchase agreements] and orders placed against a [multiple award schedule], using the procedures in this subpart, are considered to be issued using full and open competition.”). Accordingly, we deny this protest ground.

Set-Aside Decision

Next, the protester challenges the agency’s decision to continue with the procurement on an unrestricted basis in light of the significant reduction in its requirements. Protest at 24-27; Comments at 8-18. The protester argues that the agency was instead required to conduct additional market research reflecting the changed requirements and then make a new small business set-aside determination. *Id.* We find that this protest ground fails to state a valid basis of protest.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f). This requirement contemplates that protesters will provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester’s claim of improper agency action. See *Warfighter Focused Logistics, Inc.*, B-423546, B-423546.2, Aug. 5, 2025, 2025 CPD ¶ 169 at 4.

Here, the protester argues that the Small Business Act, 15 U.S.C. § 644(a), and its implementing regulations at FAR section 19.502, require the agency to conduct new market research and a new set-aside analysis for the significantly reduced requirement before proceeding with the existing, unrestricted solicitation. Protest at 24-25; Comments at 9-10. The intervenor and the agency respond that the FAR part 19 provisions do not apply to FSS procurements, and therefore this protest allegation should be dismissed. Intervenor’s Comments at 5-8; Agency’s Add’l Briefing at 1-4.

As a matter of background, the FAR requires an agency to set aside for small businesses a procurement with an anticipated dollar value above the simplified acquisition threshold when there is a reasonable expectation that: (1) quotations will be received from at least two responsible small business concerns; and (2) award will be made at a fair market price. FAR 19.502-2(b). This requirement is commonly referred to as the “rule of two.” *MCI Diagnostic Ctr., LLC*, B-417901.3, Mar. 25, 2020, 2020 CPD ¶ 112 at 3.

The FAR also provides, however, that the small business rules under FAR part 19, including FAR 19.502-2, are not mandatory, but fully at the discretion of the ordering agency, for orders issued under the FSS program. FAR 8.405-5(a)(1)(i); 19.502-4(c); see *Aldevra*, B-411752, Oct. 16, 2015, 2015 CPD ¶ 339 at 6. In this regard, our Office has explained that agencies are not required to follow the rule of two or other small business regulations under FAR part 19 when issuing orders or establishing blanket purchase agreements under the FSS program. See *Financial & Realty Services, LLC*, B-422858, Nov. 25, 2024, 2024 CPD ¶ 289 at 4; see also, *American Relocation Connections, LLC*, B-416035, May 18, 2018, 2018 CPD ¶ 174 at 3-6 (dismissing protest for failing to state a valid basis of protest because “the agency is not required to set aside the solicitation for this FSS procurement.”).

The protester here, while “not arguing that the [a]gency was required to set-aside this procurement,” nevertheless asserts that the agency was required to follow FAR part 19 procedures because the incumbent effort was procured as a small business set-aside and because the agency chose to perform a set-aside analysis as part of its initial procurement strategy. Protester’s Resp. to Add’l Briefing at 3-14. According to the protester, by engaging in the process of making a set-aside determination (e.g., conducting market research, assessing the capability of small businesses to perform the requirement, and seeking approvals from the OSDBU and SBA), the agency waived its discretion and elected to be subject to the requirements of the rule of two and other small business regulations under FAR part 19. *Id.* We disagree.

As noted above, the agency conducted this procurement as an FSS acquisition under FAR subpart 8.4. Section 8.404(a) of the FAR specifically provides that FAR part 19, Small Business Programs, does “not apply” to orders placed under FSS contracts (except under circumstances not applicable here). Thus, the agency was not required to set the requirement aside (or engage in an analysis for a set aside) in the first instance. Moreover, FAR section 8.405-5(a) provides that the preference programs under FAR part 19 are not mandatory under FAR subpart 8.4, and that agencies “may, at their discretion . . . [s]et aside orders for any of the small business concerns.” FAR 8.405-5(a)(1)(i).

Here, the record shows that the agency conducted thorough market research and analysis, and obtained approvals from the SBA and State’s OSDBU, in deciding not to set aside the procurement for small businesses. As discussed above, however, nothing in the FSS procedures required the agency to follow FAR part 19 procedures in making this decision. Likewise, when the agency chose to amend the solicitation issued under these FSS procedures to change the requirement, the amendment was also governed by these FSS procedures. We find nothing in FAR subpart 8.4 that requires the agency to use the procedures set forth in FAR part 19 to conduct a new market research analysis or to make a new (or any) set-aside determination before amending the FSS solicitation to reflect a reduction in requirements.

We therefore conclude that the agency had the discretion to decide not to set aside this FSS procurement for small business in the first instance, regardless of the size of the

requirement. Moreover, we also conclude that the agency was not required to follow FAR part 19 procedures when it reduced that requirement through an amendment to the solicitation. Accordingly, we find that this argument fails to state adequate legal grounds of protest and dismiss it on that basis. See 4 C.F.R. § 21.5(f).

The protest is denied.

Edda Emmanuelli Perez
General Counsel