



## Decision

**Matter of:** Bluehorse Corporation

**File:** B-414643.2

**Date:** August 11, 2017

---

Akenaten Bluehorse for the protester.

Alexis J. Bernstein, Esq., Capt. Justin D. Haselden, Capt. Christopher T. Heck, Col. C. Taylor Smith, Department of the Air Force, for the agency.

Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest challenging agency's decision to cancel a proposed sole-source procurement in response to a prior protest is dismissed where the protester is no longer an interested party to challenge the procurement.

---

### DECISION

Bluehorse Corporation, of Reno, Nevada, protests the decision by the Department of the Air Force to cancel its proposed sole-source procurement in response to an earlier protest filed by Bluehorse challenging the terms of presolicitation No. F3L3EA6238A002, for Taser X26P conducted electrical weapons (CEW) and related accessories.

We dismiss the protest because the protester is not an interested party.

On May 2, 2017, the Air Force issued presolicitation No. F3L3EA6238A002, expressing its intent to award, on a sole-source basis, a purchase order to Aardvark, the sole authorized distributor of TASER products for federal agencies. Agency Report (AR), Tab 2, Presolicitation Notice at 1. The presolicitation notice advised that the Air Force was proceeding under Federal Acquisition Regulation (FAR) 6.302-1, Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements. Id. The notice also advised that the Taser X26P is the only current CEW approved for use by Air Force personnel. Id.

On May 3, Bluehorse filed a protest with our Office challenging the presolicitation notice as unduly restrictive of competition and alleging that the agency failed to conduct

adequate market research. See AR, Tab 6, Bluehorse Corp., B-414643.1, Protest at 9-12. The protester also argued that it should have been afforded an opportunity to become an approved source.<sup>1</sup> Id. at 13. Finally, Bluehorse argued that it was entitled to reimbursement of its protest costs based on allegedly delayed action by the agency in taking corrective action from three allegedly similar protests on procurements for the same items.<sup>2</sup> Id. at 14.

On May 23, the Air Force requested our Office dismiss the protest as academic because the agency was cancelling the procurement and reassessing its acquisition strategy and brand name justification, as well as undertaking any additional actions as it deemed appropriate.<sup>3</sup> Notice of Corrective Action. We agreed that the agency's decision to cancel the procurement rendered the protest academic and dismissed it. See Bluehorse Corp., B-414643, May 25, 2017 (nondigested dismissal). Bluehorse's response to the Air Force's request for dismissal included objections to the cancellation decision, which we address as a separate matter here. See id.

In its protest of the cancellation, Bluehorse argued that the agency's action was pretextual and did not resolve the alleged improprieties in its procurements for Taser brand products. See Protest at 3. Bluehorse also argued that it should be given an opportunity to offer the PhaZZer product in future competitions. See id. The protester also reiterated its argument that it was entitled to costs. Id. at 4.

On July 25, after the agency report, comments, responses to inquiries from our Office, and comments thereto were filed, the agency filed a request for dismissal, asserting that Bluehorse is no longer an interested party. See generally Request for Dismissal. Specifically, the agency explains that the United States District Court, Middle District of Florida, Orlando Division issued a permanent injunction on July 21 against PhaZZer, which included enjoining Phazzer and "any other persons who are in active concert or participation with Phazzer or its officers," from offering for sale or selling the PhaZZer Enforcer CEW and cartridges. Id. at 1; see also Taser Int'l, Inc. v. PhaZZer Elecs., Inc., No. 16-cv-366 KRS (M.D.Fla. July 21, 2017). Accordingly, because Bluehorse is unable to provide the PhaZZer Enforcer CEWs and cartridges marked as compatible with Taser

---

<sup>1</sup> The protester represented that it offers less expensive "non-lethal weapons" and other accessories manufactured by PhaZZer, which Bluehorse described as a "well-known competitor to Taser's brand." See AR, Tab 6, Bluehorse Corp., B-414632, Protest at 3.

<sup>2</sup> The protester identified B-414177, B-413696, and B-413712. See AR, Tab 6, Bluehorse Corp., B-414632, Protest at 2.

<sup>3</sup> In this regard, the agency explained that in response to Bluehorse's May 3 protest, the contracting officer (CO) reviewed the presolicitation notice and market research, and concluded that some items that the agency intended to purchase on a sole-source basis could be procured using other methods. COS at 2. As a result, the agency determined that it would reevaluate which items, if any, could appropriately be acquired on a sole-source basis. Id.

CEWs, and because Bluehorse offers no other product similar to the Taser X26P, it has no further economic interest in how the agency purchases Taser products. Id. at 3. In short, Bluehorse lacks the requisite legal interest to protest the propriety of the agency's corrective action here because Bluehorse has no chance of receiving an award for CEW products even if its protest were sustained. Id.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶57.

Here, the protester does not dispute that it is incapable of providing CEWs or cartridges. See Protester's Response. Rather, Bluehorse argues that it is an interested party with respect to PhaZZer (Taser-compatible) holsters, i.e., accessories, because PhaZZer accessories were not included in the injunction. Id. Therefore Bluehorse argues that it could still offer those products. Id.

In response, the agency explains that because the underlying procurement was for Taser X26P CEWs and related accessories, and Bluehorse is unable to provide both, it is not an interested party. Agency's July 26, 2017 Reply. The agency further asserts that because Bluehorse is no longer an interested party for purposes of challenging the underlying procurement, it is not an interested party to challenge the agency's decision to cancel the procurement. Id. We agree. It is also not an interested party to seek reimbursement of its protest costs.

While the protester might have the requisite legal interest in a future procurement for holsters, the acquisition here sought CEWs and accessories, and did not provide for separate awards for these items. In its original protest, Bluehorse did not argue that the CEWs and accessories had to be procured separately. Given the terms of this procurement, Bluehorse's argument regarding its ability to furnish holsters does not render Bluehorse an interested party to challenge the agency's cancellation decision.

The protest is dismissed.

Susan A. Poling  
General Counsel