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Decision

Matter of: Noble Supply & Logistics

File: B-417269

Date: April 30, 2019

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DIGEST

1. Protest challenging the establishment of a noncompetitive logical follow-on blanket purchase agreement (BPA) is denied where the establishment of the BPA was reasonable in the interest of economy and efficiency pursuant to the authority of Federal Acquisition Regulation (FAR) § 8.405-6(a)(1)(i)(C).
2. Protest that the agency's decision to award a noncompetitive logical follow-on BPA resulted from the agency's failure to engage in adequate advance planning is denied where the agency's decision was reasonable pursuant to the authority of FAR § 8.405-6(a)(1)(i)(C).
3. Supplemental protest allegations based on a materially different legal basis than the initially submitted protest allegations are dismissed as untimely where they were filed more than 10 days after the basis for the supplemental protest allegations was known or should have been known.

DECISION

Noble Supply & Logistics, a small business, of Rockland, Massachusetts, protests the establishment of a sole-source blanket purchase agreement (BPA) with W.W. Grainger, Inc., of Lake Forest, Illinois, under request for quotations (RFQ) No. QSRA-RFQ-18005, which was issued by the General Services Administration (GSA), for industrial supplies

and services at two locations in the Republic of Korea (hereinafter, South Korea). Noble challenges the agency's limited-source justification and establishment of the BPA made as a logical follow-on to a previously established BPA.

We deny the protest.

BACKGROUND

Under GSA Federal Supply Schedule (FSS) No. 51V, Hardware Superstore, vendors offer a diverse line of products and related services that would normally be found in or offered by a hardware store, home improvement center, or maintenance, repair, or operations provider. Relevant here, Grainger was awarded Schedule No. 51V contract No. GS-06F-0007J on February 3, 1999, and, following the exercise of all options, the contract was scheduled to expire on February 1, 2019. Contracting Officer's Statement of Fact (COSF) at 2. Noble was awarded Schedule No. 51V contract No. GS-06F-0032K on July 1, 2000, and, following the exercise of all options, the contract is set to expire on June 30, 2020. Id.; Agency Report (AR), Tab 12, GSA eLibrary Information for Contract No. GS-06F-0032K, at 1.¹

GSA's Federal Acquisition Service, Office of General Supplies and Services' Office of Retail Operations (ORO) manages a 4th Party Logistics (4PL) supply chain program. Under the 4PL program, GSA's ORO serves as an integrator that assembles the resources, capabilities, and technology to design, build, and run a comprehensive supply chain solution, including both customer-facing and back-end processes which may include an online storefront, physical store locations, and/or direct delivery of products to a specific destination. As the integrator, GSA's ORO brings a commercial industrial product vendor to a customer installation in order to provide retail store services and industrial products for purchase by GSA's customers. COSF at 1.

In 2015, GSA's ORO competitively established BPAs under Schedule No. 51V to offer 4PL solutions to U.S. government customers at locations outside of the continental United States (OCONUS). GSA ultimately awarded four BPAs, including to Grainger and Noble. COSF at 2. The 4PL BPAs anticipated a 5-year base period, and one, 5-year option period. AR, Tab 3, BPA No. GS-06F-0007J, mod. No. 2, at 22. Grainger's BPA, No. GS-06F-0007J, had a base period of performance of February 5, 2015 through February 4, 2020; if the option period is exercised, the period of performance will extend through February 4, 2025. Id. Noble's BPA, No. GS-06F-0032K, has a base period of performance of February 6, 2015 through February 5, 2020; if the option period is exercised, the period of performance will extend through February 5, 2025. AR, Tab 5, BPA No. GS-06F-0032K, mod. No. 2, at 8.

In order to implement a 4PL solution at a specific OCONUS location, the 4PL BPAs contemplated that GSA would conduct a competition among the four BPA holders.

¹ References to page numbers for AR exhibits are to the electronic pagination.

Based on the competition, GSA would modify the vendor's BPA to include that specific location if GSA selected the vendor as offering the best-value solution for the particular location. AR, Tab 3, BPA No. GS-06F-0032K, mod. No. 2, at 34. The modifications would not alter the underlying BPA's period of performance. COSF at 3. In 2017, GSA conducted a competition to provide 4PL solutions at Kunsan and Osan Air Bases in South Korea. Only Noble and Grainger submitted quotations, and Grainger's quotation was ultimately assessed as offering the best value to the government. Id. On October 2, 2017, GSA modified Grainger's BPA to include the two locations. AR, Tab 3, BPA No. GS-06F-0032K, mod. No. 2.

As addressed above, the potential periods of performance, inclusive of all options, for Grainger's and Noble's respective 2015 4PL BPAs could run through early February 2025. In contrast, however, Grainger's Schedule No. 51V contract was set to expire on February 1, 2019, and Noble's Schedule No. 51V contract is scheduled to expire on June 30, 2020. Thus, as GSA effectively concedes, at the time the multiple-award 4PL BPAs were established, neither Noble nor Grainger had sufficient time on their Schedule No. 51V contracts to fulfill the full ten-year period of performance contemplated in the 2015 4PL BPA solicitation. See, e.g., GSA Request for Dismissal at 2.

Prior to the February 2019 expiration of its Schedule No. 51V contract, Grainger elected to opt into the GSA's Contract Continuity Program. Under this voluntary program, FSS contractors may request a new, continuous FSS contract under the same schedule prior to the expiration of its existing contract. Grainger's continuous Schedule No. 51V contract, No. 47QSHA18D000G, was awarded on November 10, 2017, with a five-year period of performance expiring on November 9, 2022; if all option periods are exercised, the contract's period of performance will extend through November 9, 2037. As of the filing of the protest, Noble had not elected to participate in the Contract Continuity Program; thus, its Schedule No. 51V contract will expire in June 2020. COSF at 1-2.

In November 2018, GSA executed a limited-source justification for the noncompetitive acquisition of a logical follow-on BPA to Grainger's 2015 4PL BPA for the two locations in South Korea that were competitively awarded to Grainger in 2017. The justification indicated that GSA intended to award a BPA with a 1-year base period, and four, 1-year option periods, with an estimated value of \$17,008,843. AR, Tab 8, Limited-Source Justification, at 2. GSA issued the justification pursuant to the authority of the Federal Acquisition Regulation (FAR), which provides that a noncompetitive BPA is justified if:

In the interest of economy and efficiency, the new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with applicable Federal Supply Schedule ordering procedures. The original order or BPA must not have been previously issued under sole-source or limited-sources procedures.

FAR § 8.405-6(a)(1)(i)(C).

Pursuant to the requirements of the above authority, the justification indicated that the 2015 4PL BPAs were competitively awarded, as was the 2017 modification to Grainger's BPA that is the subject of the logical follow-on BPA. AR, Tab 8, Limited-Source Justification, at 3. With respect to the interest of economy and efficiency, the justification provided that a follow-on BPA would avoid substantial duplication of previously incurred costs, allow the government to realize the cost savings and other benefits associated with continued performance, and ensure GSA's Department of Defense customers enjoy continuity of services and uninterrupted access to mission critical industrial products. Id. The justification represented that GSA's review indicated that customers save approximately 25 percent by purchasing items through GSA 4PL locations, as opposed to purchasing through other GSA channels, and that annual sales at the two South Korean locations are approximately \$3.4 million. Id.

The justification supported the follow-on BPA by explaining that the government incurred significant costs in establishing the multiple-award 2015 4PL BPAs, awarding the 2017 competitive modification to Grainger, and beginning the process of transitioning to contract performance (onboarding) by Grainger at the two South Korean locations. Id. Specifically, the justification represented that GSA incurred costs associated with acquisition, travel, information technology, and onboarding-related activities. Id. at 3-4.² Additionally, the justification addressed the time and costs incurred to move Grainger's substantial inventory that was transported to, and currently resides, at the two locations. Id. at 4.³

In addition to the associated costs, the justification also noted the associated system and operational onboarding tasks that occurred to onboard Grainger at the two locations in South Korea. Id. In addition to the typical transition activities for a 4PL conversion, including, among other tasks, information technology-related loading, testing and validation, product research and sourcing, installation of equipment and shelving, transporting of product, and stocking the shelves and staging inventory, GSA also

² GSA represents that its estimated transition costs for establishing a 4PL solution at a customer location is approximately \$230,000, and its estimated transition costs associated with transitioning from one 4PL vendor to another vendor is approximately \$180,000. AR, Tab 11, Estimated 4PL Transition Costs, at 1-2. The difference in associated costs to GSA is that in a 4PL conversion the agency incurs certain upfront information technology-related costs (e.g., placing telecommunications lines and workstations/terminals in the facility), while such costs would not be duplicated when transitioning from one 4PL vendor to another. COSF at 5.

³ The government bears the costs of transporting a 4PL vendor's products to (and from, if applicable) the two locations in South Korea. The government, therefore, bore the costs associated with moving Grainger's supplied products to South Korea, and, in the event of a transition to another 4PL contractor, the government would similarly bear the costs to return Grainger's unsold merchandise to the United States and to transport the new vendor's products to South Korea. COSF at 7, 8.

explained that there are additional unique tasks associated with transitioning in a new vendor to work at the two locations in South Korea. For example, the incoming vendor must first obtain approval to hire overseas. Once the vendor is authorized to and hires employees, GSA must then interface with the OCONUS installation to obtain required Republic of Korea Status of Force Agreement eligibility determinations, which generally take between 30 and 60 days to obtain. COSF at 8. Additionally, the incoming vendor and its employees must obtain access approval from the local installation. Id. at 5. Furthermore, the vendor, GSA's Transportation Team, and the Army Surface Deployment and Distribution Command must collaborate on a multi-step process to move the vendor's products to South Korea, including: staging the product; loading the product into a container; transporting the container to a port for overseas transport; clearing customs; and moving the products to the installation. This process can take approximately 8 to 10 weeks. Id. at 8.

The justification also addressed the risks associated with the potential disruption to services as a result of a competition for the follow-on requirements, as well as the practical limitations of conducting a new competition where many Schedule No. 51V contractors have not elected to opt into the Contract Continuity Program, and therefore have contracts that will expire before the completion of the BPA's anticipated five-year period of performance. AR, Tab 8, Limited-Source Justification, at 4. Based on the totality of the above considerations, the justification concluded that the logical follow-on BPA with Grainger would be in the interest of economy and efficiency. On January 16, 2019, GSA posted the justification and notice of award to Grainger on the Federal Business Opportunities website. Noble subsequently filed this protest with our Office.

DISCUSSION

Noble primarily challenges GSA's determination that continuing performance with Grainger under a sole-source, logical follow-on BPA would be in the interest of economy and efficiency. Specifically, the protester contends that the agency overstates the economic impact and required time to implement a transition of the 4PL solution at the two locations in South Korea, and the likelihood of a service interruption to GSA's customers, relative to the potential benefits if the requirements were recomputed. Additionally, Noble alleges that GSA's decision to establish a sole-source follow-on BPA with Grainger is the result of a lack of adequate advance planning. For the reasons that follow, we find that the agency has reasonably established why a logical follow-on BPA with Grainger is in the interest of economy and efficiency, and therefore we find no basis on which to sustain the protest. Before addressing the merits of the protest, we address the protester's status as an interested party to pursue this protest.

Interested Party

GSA and Grainger argue that Noble is not an interested party because, even if our Office were to sustain the protest, the protester would not be eligible to compete for a BPA with a potential five-year period of performance where Noble's Schedule No. 51V contract is set to expire in June 2020. Noble argues that it is interested to challenge the

sole-source BPA established with Grainger because, while Noble would not be eligible to compete for a BPA with a five-year period of performance, it is not apparent that, if our Office were to sustain the protest, GSA could establish a sole-source BPA, or otherwise competitively establish a BPA, under Schedule No. 51V. If GSA were required to utilize a different acquisition approach, the protester argues that it would likely be eligible to compete under such circumstances. For the reasons that follow, we find that Noble is an interested party to pursue this protest.

Under the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3557, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. Id.

Here, if we find that GSA could not reasonably invoke the sole-source exception for a logical follow-on BPA under FAR § 8.405-6(a)(1)(i)(C), GSA does not argue, and it is not otherwise apparent, that GSA could invoke one of the other exceptions to competition set forth in FAR § 8.405-6(a).⁴ Furthermore, the arguments and record submitted by the agency strongly suggest that there would be an insufficient number of eligible Schedule No. 51V contract holders to adequately conduct a competitive BPA follow-on procurement, at least for the BPA's anticipated 5-year period of performance. In this regard, the contemporaneous record and arguments submitted in response to the protest include several representations that competition for a BPA would be impracticable because many of the eligible Schedule No. 51V contract holders have not opted to enroll in the Contract Continuity Program, and, thus, have FSS contracts that will be expiring imminently. See, e.g., AR, Tab 8, Limited-Source Justification, at 5 ("Establishing a new BPA through competition presents an additional risk of disruption of service because many eligible [Schedule No.] 51V vendors' hold [Schedule No.] 51V contracts that will expire in the near future and have not yet obtained new, follow-on [Schedule No.] 51V contracts."); COSF at 4 ("Further, many eligible [Schedule No.] 51V contractors (i.e., those that hold the three required [special item numbers] for 4PL) have [Schedule No.] 51V contracts that are expiring in the near future and, as in the case of Noble, have not [] yet obtained a new, continuous [Schedule No.] 51V contract."). Thus, it is not readily apparent what acquisition approach the agency would pursue if

⁴ Pursuant to FAR § 8.405-6(a)(1)(i), the other circumstances that may justify a limited sources justification are: (A) an urgent and compelling need exists, and following competitive procedures would result in unacceptable delays; or (B) only one source is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized.

our Office were to sustain the protest, and Noble would likely be eligible to compete under at least certain of the potential alternative acquisition approaches. Therefore, we find that Noble is an interested party under these unique circumstances.

Justification for Invoking FAR § 8.405-6(a)(1)(i)(C)

Noble's initial protest challenges the reasonableness of the limited-source justification, and argues that it has not been shown to be in the interest of economy and efficiency to establish a follow-on BPA with Grainger. GSA responds that the agency fully documented its justification considering economy and efficiency. We will review an agency's use of a limited source justification under FAR subpart 8.4, including, as here, a decision to award a noncompetitive logical follow-on BPA or order pursuant to FAR § 8.405-6(a)(1)(i)(C), for reasonableness. Federal Working Grp., B-416464, B-416464.2, Sept. 19, 2018, 2018 CPD ¶ 324 at 4; Xtec, Inc., B-405505, Nov. 8, 2011, 2011 CPD ¶ 249 at 5. For the reasons that follow, we agree with GSA that the justification was reasonable and in the interest of economy and efficiency.

Noble "concedes that there [would be] transition costs" and "does not dispute that there [would be] costs involved" if the agency were to conduct a competition and ultimately transition the work away from Grainger, rather than proceeding with a sole-source, logical follow-on BPA. Protester Comments at 12. Indeed, Noble's comments following receipt of the agency report do not specifically challenge any of the individual identified costs incurred by the agency with respect to the establishment of the 4PL locations in South Korea, or that would be anticipated to be incurred in transitioning the work to another 4PL vendor. Similarly, the protester's comments do not specifically address the additional transition-related activities unique to work performed in South Korea that could contribute to the risk of a delayed transition or potential disruption of services to GSA's customers. Rather, the protester's comments generally argue that GSA's minimum anticipated transition costs are insubstantial enough to justify a sole-source award. We do not find this line of argument persuasive.

Specifically, as addressed above, GSA reasonably demonstrated that the government expended significant costs and effort in competing the 2017 modification for the two South Korea locations, converting the two locations to 4PL solutions, and transitioning Grainger into performance. While certain of these costs, including, for example, one-time information technology related costs, would not be incurred in the event of a transition to another 4PL vendor, the bulk of the other costs identified by GSA, such as onboarding the new vendor and transporting its products to South Korea, would unquestionably be duplicated by a transition. The agency also reasonably explained that unique in-country requirements attendant to transitioning the work to another 4PL provider increases the risk of transition delays and potential disruption of services for GSA's customers. On this record, we find that GSA reasonably has established that economies and efficiencies are expected by continued performance with Grainger.

While Noble disputes the materiality of the anticipated economic and efficiency benefits, we find that such arguments provide no basis on which to sustain the protest. In this

regard, FAR § 8.405-6(a)(1)(i)(C) does not include any provision requiring an agency to quantify the potential economic and efficiency benefits of a logical follow-on BPA or order, or otherwise find that such a follow-on award would definitively result in the most significant potential cost savings to the government. Rather, as set forth above, we review for reasonableness an agency's determination whether continued performance through a logical follow-on BPA or order would be in the interest of economy and efficiency. In this regard, a contracting agency is generally given discretion to determine what method of procurement will best satisfy its needs. Signals & Sys., Inc., B-288107, Sept. 21, 2001, 2001 CPD ¶ 168 at 13; Steel Circle Bldg. Co., B-233055, B-233056, Feb. 10, 1989, 89-1 CPD ¶ 139 at 3. Here, we find that the record adequately supports the reasonableness of the agency's determination where it thoroughly explained why the follow-on BPA with Grainger would result in the avoidance of the duplication of material costs and efforts, thus resulting in economic and efficiency benefits for the government. Therefore, we find no basis to sustain the protest.

Lack of Adequate Advance Planning

Noble's initial protest also alleges that GSA's issuance of a noncompetitive follow-on BPA to Grainger was the result of a lack of reasonable and adequate advance planning. In support of its argument, the protester contends that the agency unreasonably delayed pursuit of a follow-on procurement until shortly before Grainger's Schedule No. 51V contract was set to expire, and thus its sole-source decision was the result of inadequate planning. We find the protester's allegations present an insufficient basis upon which to sustain the protest.

CICA generally requires full and open competition when conducting government procurements. 41 U.S.C. § 3301(a). CICA, and its implementing regulations in FAR part 6, however, permit noncompetitive acquisitions under certain circumstances. An agency, however, may not use noncompetitive procedures due to its lack of advance planning. XTec, Inc., B-410778.3, Oct. 1, 2015, 2015 CPD ¶ 292 at 10; J&J Colombia Servs. MV LTDA, B-299595.3, June 26, 2007, 2007 CPD ¶ 126 at 3.

The issuance of BPAs and orders under FAR subpart 8.4 are generally exempt from the competition requirements of CICA and its implementing regulations. FAR § 8.405-6. Rather, such acquisitions are subject to the specific competition rules set forth in FAR subpart 8.4. For example, as discussed above, FAR § 8.405-6(a)(1)(i)(C) allows for a sole-source, logical follow-on BPA or order when the initial BPA or order was established in accordance with applicable FSS ordering procedures, and was not issued under sole-source or limited-sources procedures. While not subject to the specific requirements of FAR part 6, however, we have recognized that an agency similarly may not utilize the non-competitive procedures of FAR subpart 8.4 as a result of a lack of adequate advance planning. See XTec, Inc., 2015 CPD ¶ 292 at 12 n.18. Here, however, we find no basis to conclude the GSA's decision to establish a sole-source, logical follow-on BPA with Grainger was the result of a lack of advance planning.

As an initial matter, the decision to issue a sole-source, logical follow-on BPA to Grainger cannot be considered in a vacuum. As addressed above, the procurement history for the 4PL services in South Korea at issue in this protest is long. GSA first competitively established the 2015 4PL BPAs, and then in 2017 competed among the BPA holders the specific requirements at issue. Noble was an active competitor in both competitive processes. As a result of the 2017 BPA modification competition, Grainger was selected to provide the 4PL services at the two locations in South Korea through the end of its 4PL BPA's period of performance, which initially was contemplated as running through 2025. As the parties now recognize, there was an oversight in the establishment of the 2015 4PL BPAs, specifically, that they were awarded for up to a ten year period of performance despite the fact that the BPA holders' respective Schedule No. 51V contracts did not have sufficient available periods of performance commensurate with the total potential period of performance for the 4PL BPAs. While this error resulted in the need for GSA to revisit how it would proceed to provide the 4PL services at issue beyond February 2019, we do not find that this single error alone reasonably demonstrates a lack of advance planning. In this regard, we have explained that, while an agency may not justify a noncompetitive award on the basis of urgency where the agency's requirements have become urgent as a result of a lack of advance planning, such planning need not be entirely error-free or successful. American Sys. Corp., B-412501.2, B-412501.3, Mar. 18, 2016, 2016 CPD ¶ 91 at 9; eAlliant, LLC, B-407332.4, B-407332.7, Dec. 23, 2014, 2015 CPD ¶ 58 at 5.⁵

As addressed above, we find that GSA reasonably and adequately explained the basis for its determination that awarding a logical follow-on BPA to Grainger was in the interest of economy and efficiency pursuant to FAR § 8.405-6(a)(1)(i)(C). For purposes of Noble's protest that the agency failed to engage in adequate advance planning, it is important to note that none of the justifications relied upon by the agency are predicated on any urgent or compelling circumstance caused by the expiring of Grainger's original BPA and Schedule No. 51V contract. Rather, the justifications advanced by the agency pertain to the avoidance or minimization of previously expended costs, as well as the minimization of transition risk, that would arise as the result of any transition from

⁵ While not dispositive, we note that Noble similarly received a 2015 4PL BPA with a period of performance exceeding the duration of its Schedule No. 51V contract, and has subsequently received at least two orders to provide 4PL services under that BPA. See COSF at 6. Noble does not allege that, prior to its response to the agency's request for dismissal, it believed that the 2015 4PL BPAs were not established in accordance with applicable FSS ordering procedures. Additionally, we note that GSA, well in advance of the expiration of the 4PL BPA holders' underlying Schedule No. 51V contracts, specifically contacted the vendors regarding opting into the Contract Continuity Program in order to renew their respective contracts. Notwithstanding this prudent advance effort by the agency to ensure the continuity of these vendors' FSS contracts, Noble and other vendors failed to take affirmative steps to renew their respective contracts. See AR, Tab 12, Memo. From Schedule No. 51V Branch Chief, at 1; COSF at 4.

Grainger to another 4PL vendor. In this regard, none of the purported economic or efficiency benefits of establishing a logical follow-on BPA can reasonably be correlated to any urgent or compelling circumstance arising from GSA's failure to adequately plan for a follow-on acquisition. Rather, the benefits of avoiding the duplication of costs and efforts, and the associated potential risks of transitioning the work to another 4PL vendor, were reasonably correlated to the interest of economy and efficiency, which is consistent with the express exception to competition set forth in FAR § 8.405-6(a)(1)(i)(C). Therefore, we find no basis to sustain the protest on this basis.

Untimely Piecemeal Protest

As discussed above, Noble's initial protest contains two protest allegations. First, the protester challenges the agency's determination that the establishment of a sole-source, logical follow-on BPA with Grainger was in the interest of economy and efficiency. Second, Noble argues that GSA's issuance of the limited-source justification shortly before the expiration of Grainger's original Schedule No. 51V contract demonstrated that the agency had failed to engage in adequate advance planning. As addressed above, we find no basis on which to sustain the protest on these bases.

In its response to the agency's request for dismissal, Noble for the first time advances new arguments in support of its initial protest allegations. Specifically, the protester alleges that GSA could not invoke the sole-source authority under FAR § 8.405-6(a)(1)(i)(C) because Grainger's initial BPA was not awarded in accordance with applicable FSS ordering procedures. As a result of its inability to rely on this exception, the protester contends that GSA failed to engage in reasonable and adequate advance planning before establishing a sole-source BPA with Grainger. For the reasons that follow, we dismiss these protest allegations as untimely.

By way of background, in our recent decision in GBK P'ship, LLC-Constant Assocs., Inc., B-417039, Jan. 24, 2019, 2019 CPD ¶ 30, we denied a protest challenging a firm's exclusion from a competition for the issuance of a BPA where the procuring agency reasonably found that the protester was ineligible for award where its FSS contract included an insufficient period of performance to cover the potential 5-year duration of the anticipated BPA. Specifically, the procuring agency concluded that it could not establish a BPA with the protester that potentially could expire in September 2023, when the protester's FSS contract would expire in August 2022. In this regard, the applicable FSS ordering procedures indicate that: "[c]ontractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance." FAR § 8.405-3(d)(3).⁶

⁶ As with the FSS contract at issue in GBK P'ship, LLC-Constant Assocs., Inc., the applicable FSS contract at issue here also includes clause I-FSS-646, Blanket Purchase Agreements, which similarly provides, in relevant part, that vendors may enter into a BPA with an ordering activity provided that: "[t]he period of time covered by such
(continued...)

In denying the protester's challenge to its exclusion from the competition, we agreed with the procuring agency and GSA (we invited GSA to participate in the protest pursuant to 4 C.F.R. § 21.3(j)), that FAR § 8.405-3(d)(3) requires a vendor's FSS contract to have sufficient duration, including potential options, to coincide with the entire potential period of performance for the resulting BPA. In this regard, we recognized that a FSS BPA is not established with the contractor directly, but rather, is established under the contractor's FSS contract, such that the FSS BPA orders "ultimately are to be placed against the successful vendor's FSS contract." GBK P'ship, LLC-Constant Assocs., Inc., *supra*, at 5 (quoting Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 1-2 n.1).

Consistent with the foregoing FAR provision and decision of our Office, Noble argues that GSA cannot invoke the sole-source authority of FAR § 8.405-6(a)(1)(i)(C) because Grainger's 2015 4PL BPA was not established in accordance with applicable FSS ordering procedures. Specifically, the protester argues that Grainger's 2015 4PL BPA, which had a total potential period of performance that could have ran through 2025, was not in compliance with FAR § 8.405-3(d)(3) because Grainger's prior Schedule No. 51V contract was scheduled to expire in 2019. We must dismiss these arguments because they were untimely raised by the protester.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). 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 Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970 *et al.*, Nov. 25, 2015, 2015 CPD ¶ 373 at 15 n.10; Epsilon Sys. Solutions, Inc., B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 11.

Here, Noble was, or reasonably should have been, aware of all of the predicates for its arguments by no later than the time that it filed its initial protest. In this regard, the protester was, or reasonably should have been, aware that GSA was invoking FAR § 8.405-6(a)(1)(i)(C) as the basis for the sole source follow-on BPA, the relevant information regarding the effective dates of Grainger's FSS contract were set forth in the limited-source justification or were otherwise publically available through GSA's

(...continued)

agreements shall not exceed the period of the contract including option year period(s)." FSS Schedule 51V Hardware Superstore Solicitation, No. 6FEC-E6-060173-B, Refresh 28, at 170.

website,⁷ and of the limitations of FAR § 8.405-3(d)(3) that a BPA may only be issued beyond the current term of the applicable FSS contract if there are option periods, which if exercised, will cover the BPA's period of performance.

Noble opposes dismissal of this aspect of its protest. Specifically, the protester argues that its initial protest timely challenged the government's reliance on FAR § 8.405-6(a)(1)(i)(C), and therefore, its further expounding upon the government's improper reliance on the provision should properly be considered as being encompassed within its initial protest allegations. Noble's initial protest, however, only challenged the agency's reliance on the above FAR provision on the basis that GSA unreasonably concluded that a logical follow-on to Grainger would be in the interest of economy and efficiency. See Protest at 6-10. This argument is materially distinct from Noble's subsequent argument, which appears nowhere in the initial protest, that GSA could not legally rely on the competition exception because the initial BPA awarded to Grainger was not in accordance with applicable ordering procedures. Thus, to the extent that the protester raised what amounts to a secondary--new--aspect of its challenge to the agency's reliance on FAR § 8.405-6(a)(1)(i)(C), this new assertion constitutes improper piecemeal presentation of a protest allegation. Vertical Jobs, Inc., B-415891.2, B-415891.4, Apr. 19, 2018, 2018 CPD ¶ 147 at 4 n.2; Beechcraft Def. Co., LLC, B-406170.2 et al., June 13, 2013, 2013 CPD ¶ 147 at 24 n.9. Similarly, we find that Noble's more detailed, subsequent allegations regarding GSA's legal inability to rely on the exception in FAR § 8.405-6(a)(1)(i)(C) as demonstrating a lack of adequate advance planning is materially distinct from the generic lack of advance planning

⁷ Noble argues that available information on GSA's e-Library website "merely informs as to the expiration date of the FSS contract," but the protester could not have known that Grainger's original Schedule No. 51V contract did not have any remaining available options. Noble Br. on Timeliness at 3. We find no merit to this argument. First, the limited-source justification explicitly stated that Grainger's original Schedule No. 51V contract would expire in February 2019, but that GSA had awarded Grainger a new Schedule No. 51V contract. AR, Tab 8, Limited-Source Justification, at 2. Even assuming for the sake of argument, however, that the information in the justification did not effectively put Noble on notice, other publically available information on GSA's website unquestionably and explicitly includes the relevant information. For example, Grainger's Authorized FSS Price List, which is available on GSA's website, unequivocally states that the contract period was February 3, 1999 through February 1, 2019. See W.W. Grainger, Inc. Authorized FSS Price List for Contract No. GS-06F-0007J, available at https://www.gsaadvantage.gov/ref_text/GS06F0007J/0MJ74L.2RP5DO_GS-06F-0007J_GSAPRICELISTTERMS2019.PDF (last visited April 12, 2019).

argument raised in the initial protest. Therefore, we dismiss this aspect of Noble's protest because it was untimely raised.⁸

The protest is denied.

Thomas H. Armstrong
General Counsel

⁸ Noble also requests that if we find its secondary argument untimely, we consider it pursuant to the significant issue exception to our timeliness rules. 4 C.F.R. § 21.2(c). In light of our recent decision in GBK P'ship, LLC-Constant Assocs., Inc., *supra*, we decline Noble's request that we address this materially similar, untimely raised legal question under the significant issue exception to our timeliness rules. Id.