



**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:** Island Pyrochemical Industries

**File:** B-418994

**Date:** September 29, 2020

Richard J. Conway, Esq., and Adrien Pickard, Esq., Blank Rome LLP, for the protester. Jamie F. Tabb, Esq., Ryan D. Stalnaker, Esq., and John M. Satira, Esq., Vinson & Elkins LLP, and Catherine K. Ronis, Esq., BAE Systems, Inc., for BAE Systems, Ordnance Systems, Inc., the intervenor.

Wade L. Brown, Esq., and Jessica L. Weiford, Esq., Department of the Army, for the agency.

Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency is improperly seeking to modify an indefinite-delivery, indefinite-quantity contract for the production of multiple propellants and propellant components to increase the contract's ceiling and ordering quantities is dismissed where the protester, a potential supplier of a single component constituting less than 0.00[DELETED] percent of the proposed ceiling increase, is not an interested party to challenge the agency's proposed modification.

### DECISION

Island Pyrochemical Industries (IPI), of Mineola, New York, challenges the Department of the Army, U.S. Army Contracting Command – Rock Island's decision to execute a sole-source justification and approval (J&A) to award a contract modification to increase the ceiling price and ordering quantities of the Army's indefinite-delivery, indefinite-quantity (IDIQ) contract No. W52P1J-11-D-0013 with BAE Systems, Ordnance Systems, Inc. (BAE-OSI), of Radford, Virginia, for the production of propellant and propellant components. IPI alleges that the J&A lacks a reasonable basis and fails to include an adequate rationale to support the asserted basis that BAE-OSI is a "vital supplier" needed in case of a national emergency, or that, in the absence of a sole-source modification, there will be a break in the production of the propellant and propellant grains produced under the contract.

We dismiss the protest.

## BACKGROUND

On June 24, 2010, the Army issued request for proposals No. W52P1J-09-R-0015 on a full and open competition basis for the continued operation and maintenance of the Radford Army Ammunition Plant (RFAAP). RFAAP is a government-owned, contractor-operated energetic (propellant) manufacturing plant; it is the primary producer of solvent propellants and the only producer of solvent-less propellants and Nitrocellulose, a key ingredient of several propellants required by the Department of Defense, in the National Technology and Industrial Base (NTIB). The solicitation contemplated that the successful offeror would be awarded multiple contracts consisting of: (1) a zero-dollar fixed-price contract for facilities operations and maintenance; (2) a fixed-price IDIQ contract for supplies; and (3) a basic ordering agreement utilizing task orders on a fixed-price or cost-reimbursable basis for direct-funded services and modernization projects. Contracting Officer's Statement and Legal Memo. (COS/MOL) at 2.

Under the above contracting arrangement, the operating contractor would be required to operate and maintain RFAAP under a no-cost contract, and would need to recoup its operations and maintenance costs through product and service pricing. *Id.* at 3. The operations and maintenance contract has a 5-year base period, a 5-year option period, and incentives that could extend the contract for up to 25 years. *Id.* at 2. The IDIQ supply contract initially had a 5-year period of performance. *Id.*

On May 17, 2011, BAE-OSI was awarded three companion contracts as a result of the RFAAP competition, including IDIQ supply contract No. W52P1J-11-D-0013. The IDIQ supply contract included a maximum ceiling value of \$423 million for the 5-year period of performance running through May 2016. *Id.* at 3. The IDIQ supply contract included a list of specific propellants and propellant components; relevant here is the requirement for MK90 propellant grain. *Id.* The MK90 propellant grain provides propulsion for the MK66 rocket motor which is a key component of the U.S. Army's Hydra 70 rocket system used on multiple fixed-wing and rotary-wing aircraft, including the AH-64 Apache, the UH-60 Black Hawk, the AH-1 Cobra, and the A-10 Warthog. *Id.* at 1 n.2. A critical component of the MK90 propellant grain is ethyl cellulose inhibiting tape (hereinafter, EC Tape). See *id.* at 4; Protest at 4.

The IDIQ supply contract did not initially provide a separate line item for EC Tape; the Army, however, considered it to be within the scope of the contract because it was produced in-house at RFAAP as a component of the MK90 propellant grain. COS/MOL at 4 n.8. In the second year of the contract, the Army decided to add EC Tape as a separate product that could be ordered under BAE-OSI's supply contract. *Id.* at 4. In December 2013, the Army placed its first order for EC Tape with BAE-OSI, ordering 22,440 lbs. at a total price of [DELETED]. *Id.* Thereafter, the Army placed additional orders for EC Tape of: 261 lbs. at a total price of [DELETED] in May 2014; [DELETED] at a total price of [DELETED] in November 2014; and 17,000 lbs. at a total price of [DELETED] in June 2015. *Id.*

In September 2015, the Army executed a J&A to extend the IDIQ supply contract's period of performance through July 31, 2018; the extension, however, was not accompanied by a ceiling increase. Agency Report (AR), Tab 10a, Unredacted May 2015 J&A at 4. The J&A was issued in accordance with 10 U.S.C. § 2304(c)(3), as implemented by Federal Acquisition Regulation (FAR) 6.302-3, Industrial Mobilization. *Id.* Relevant here, FAR 6.302-3(a)(2)(i) provides that full and open competition need not be provided for when it is necessary to award a contract to a particular source or sources in order to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization. See *also* FAR 6.302-3(b)(1)(i) (providing that the use of this authority may be appropriate to keep vital facilities or suppliers in business or make them available in the event of a national emergency). In relevant part, the J&A, which was published on the official government-wide point of entry in October 2015, provided that:

- a. The Army's [Program Executive Officer Ammunition] is assigned the Department of Defense's (DOD) [Single Manager for Conventional Ammunition (SMCA)] responsibilities. Public Law 105-261, Section 806, Procurement of Conventional Ammunition, Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 establishes the requirement for the SMCA to limit a specific procurement of ammunition to sources located within the [NTIB] in accordance with Section 2304(c)(3) of Title 10, United States Code, in any case in which the manager determines that such limitation is necessary to maintain a facility, producer, manufacturer or other supplier available for furnishing an essential item of ammunition or ammunition component in cases of national emergency or to achieve industrial mobilization. Such items are identified on the SMCA, Section 806 Conventional Ammunition End Item/Component Watch List. All types and classes of Propellants and Nitrocellulose that BAE OSI produces at RFAAP are included on the Watch List and are essential ammunition components that must be available to support a national emergency; in addition, the specialized manufacturing processes and skill sets associated in producing these propellants would cost an exponential amount to re-establish the capability to produce the propellants listed in paragraph three of the J&A. The proposed action to restrict the production and supply of these various propellants to BAE OSI as the sole and current operator of RFAAP is necessary in order to ensure that the SMCA could respond to a national emergency, and not place the NTIB with any unacceptable risk.
- b. RFAAP, a Government-Owned Contractor-Operated facility, is a vital facility in the NTIB with the capability/capacity to produce current requirements and to rapidly supply large quantities of various solvent and solventless propellants to support national emergencies. RFAAP

currently is the only NTIB energetics production facility producers of solvent (single and multibase) propellants. Critical capabilities at RFAAP are unavailable in the private sector and must be maintained in the interest of defense and industrial readiness. The Defense Industrial Reserve Act requires DOD to maintain a nucleus of Government-owned plants and equipment and to maintain an industrial reserve of equipment for emergencies. Army Regulation 700-90 requires reliance primarily on private industry, supplemented by Government-Owned facilities like RFAAP, when necessary, to provide sufficient industrial base capability to meet required readiness. Restricting production and supply of solvent and solventless propellants to BAE will maintain those critical capabilities at RFAAP within the NTIB.

- c. It is critical to have highly trained and skilled operators in order to successfully and safely produce the propellant compositions of those items listed in paragraph three. These highly critical skills include operators for the following processes: acid handling and storage, nitric acid and sulfuric acid concentration, nitrocellulose nitration, nitrocellulose purification, nitrocellulose blending, nitroglycerin nitration, single and multi-base solvent propellant manufacturing, solventless propellant manufacturing, propellant grain finishing and x-ray capabilities. The skills required to perform the following support functions are also found to be critical: quality assurance, environmental, and research and development. As the operating contractor, BAE OSI employees are the only operators with the capability to perform these skills.
- d. Further, BAE OSI was competitively awarded the initial five-year [fixed-price] supply contract and a 25-year (10-year base award with an option for an additional 15 years) facilities use contract for RFAAP. This facilities use contract was awarded as a "zero" ("0") dollar contract. BAE is required to perform the projects defined in the Indirect Performance Work Statements (PWSs) at no cost (not separately funded) to the U.S. Government. As consideration, BAE receives revenues through the companion [fixed-price] IDIQ supply contract (W52P1J-11-D-0013) and orders issued under the [blanket ordering agreement] for modernization projects and direct services (W52P1J-11-G-0002), along with third-party sales made through the grant of facilities use approvals. The cost for performance of the indirect [performance work statements] are amortized into the price of products contained in the [fixed-price] IDIQ contract and any other production contracts that are awarded for performance at Radford. This situation precludes any other contractor from utilizing RFAAP for production of propellant compositions.

AR, Tab 10a, Unredacted May 2015 J&A at 4-5.

Subsequent to the 2015 J&A extending the period of performance, the Army placed an additional order in August 2017 for 19,500 lbs. of EC Tape at a total price of [DELETED]. COS/MOL at 8. In July 2018, the Army decided to extend BAE-OSI's IDIQ supply contract through January 23, 2022, thereby aligning the end date for all three of the RFAAP contracts originally awarded to BAE-OSI. The Army found that the extension did not constitute new work necessitating a J&A because the IDIQ supply contract was a companion contract to the no-cost facilities use contract, and the original intent was for the contracts to run concurrently so that the contractor could receive revenues through the companion IDIQ supply contract and basic ordering agreement as consideration for operating the facility. Notwithstanding the extension of the period of performance, the Army did not increase the IDIQ supply contract's ceiling. See *id.*; AR, Tab 12a, In-Scope Determination & Findings. Following the second extension of the IDIQ supply contract's period of performance, the Army placed two additional orders for EC tape: 17,000 lbs. at a total price of [DELETED] in May 2019; and 17,000 lbs. at a total price of [DELETED] in December 2019. COS/MOL at 8.

On June 28, 2019, the Army issued a sources sought notice for the production of Nitrocellulose and propellant products, as well as for the operation, maintenance, and modernization of RFAAP in anticipation of the full and open best-value re-compete in 2022 following the end of BAE-OSI's three companion contracts. COS/MOL at 10; AR, Tab 17a, Sources Sought Notice. IPI inquired regarding [DELETED], but it did not otherwise submit information indicating its interest in the follow-on acquisition. COS/MOL at 10.

In 2020, the Army determined that the ceiling of BAE-OSI's IDIQ supply contract would be reached by the end of fiscal year 2020. Therefore, in order to provide additional funding for the government's requirements through the end of the contract's period of performance on January 23, 2022, the agency executed a sole-source J&A to increase the ceiling by \$402,493,468, for a total aggregate ceiling of \$825,496,468. COS/MOL at 10-11; AR, Tab 2a, Unredacted June 2020 J&A, at 5. The J&A included a detailed breakdown of the anticipated planned and walk-in/surge quantities for the remainder of fiscal year 2020 and fiscal years 2021 and 2022 for the various propellants and propellant components produced under the contract.

Relevant here, for the remainder of the contract's period of performance the agency anticipated 770 lbs. of EC Tape at a total estimated value of [DELETED]. *Id.* at 5. As with the May 2015 J&A, the agency asserted that the sole-source justification for the modification was 10 U.S.C. § 2304(c)(3), as implemented by FAR 6.302-3. *Id.* at 6. The supporting justification provided by the agency was materially similar to the justification provided in the May 2015 J&A. Compare AR, Tab 10a, Unredacted May 2015 J&A at 4-5 with Tab 2a, Unredacted June 2020 J&A at 6-8. On July 31, 2020, a redacted version of the J&A and notice of the accompanying contract modification was published by the Army; this protest followed.

## DISCUSSION

IPI primarily alleges that the June 2020 J&A increasing the ceiling for BAE-OSI's IDIQ supply contract is insufficient because it fails to provide an adequate rationale to support the conclusion that BAE-OSI is a vital supplier necessary in the event of a national emergency, or that there will be a break in production in the absence of the sole source modification. In addition to substantively defending the sufficiency of the J&A, the Army and intervenor request that our Office dismiss the protest because they contend that IPI is not an interested party to challenge the modification. Specifically, the agency and BAE-OSI contend that the protester has only represented that it is capable of producing EC Tape, which is only a single item that is produced under the IDIQ supply contract. In this regard, the parties argue that, while a critical component, EC Tape constitutes only a very small component of the overall requirements covered by the contract, and IPI has made no showing that it has or is capable of satisfying the agency's other requirements for the manufacture of the propellants and other propellants that constitute the vast majority of the agency's overall requirements. For the reasons that follow, we agree that IPI is not an interested party to challenge the proposed modification to the BAE-OSI IDIQ supply contract.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 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 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)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of 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.

Here, IPI makes no representations that it would be an actual or prospective offeror if the agency were to compete the procurement for all of the various propellants and propellant components covered by BAE-OSI's IDIQ supply contract. Rather, it argues that it produces--and would be a potential offeror for--EC Tape, a single component representing less than 0.00[DELETED] percent [DELETED]/\$402,493,468) of the total proposed ceiling increase.<sup>1</sup> See, e.g., Protest at 2 ("IPI is a manufacturer of compliant

---

<sup>1</sup> For additional context, the total combined value for EC Tape delivered to date and anticipated by the proposed ceiling increase ([DELETED]) on BAE-OSI's IDIQ supply contract represents approximately [DELETED] percent of the total value of the contract inclusive of the proposed ceiling increase (\$825,493,468). We note that IPI also challenges the agency's calculation of the anticipated needs for EC Tape, arguing that the government's needs for the next two years are more likely to be 270,000 lbs. at a total price in excess of \$[DELETED]. See Comments at 4. Even assuming the protester were correct, however, we do not find that this fact would materially change our analysis. In this regard, even if IPI were correct, it would still only be a potential offeror for EC Tape, a single component representing approximately [DELETED]

EC Tape whose interests are materially affected by the issuance of the sole-source Modification and who has an interest in competing for this requirement.”).

Under similar circumstances, we have found that a protester that produces only a small component of a proposed sole-source acquisition would likely participate in such a procurement only as a subcontractor or supplier, rather than a prime contractor, for the government’s requirements, and, therefore, is not an interested party to challenge an agency’s intent to make a sole source award. For example, in *PPG Industries, Inc.*, our Office dismissed a protest challenging the Department of State’s proposed sole-source award of a contract for passport printers, associated printer and document consumables, and printer maintenance. There, we found that the protester, a producer of a synthetic material that could be used in lieu of paper in printing security documents, was not an interested party to challenge the proposed contract, which primarily was for equipment used to prepare passports. In this regard, while the protester may have been a supplier or subcontractor for the paper substitute used in the printing, it failed to demonstrate that it manufactured or sold any form of equipment for the actual preparation of the passports. *PPG Indus., Inc.*, B-272126, June 24, 1996, 96-1 CPD ¶ 285 at 3; see also *Team Wendy, LLC*, B-417700.2, Oct. 16, 2019, 2019 CPD ¶ 361 at 7-8 (dismissing protest filed by supplier of pad inserts for enhanced combat helmets challenging an alleged out-of-scope modification to the helmet contractor’s contract where the supplier was not an interested party because it did not manufacture the complete helmets); *Allied Tube & Conduit*, B-252371, Apr. 27, 1993, 93-1 CPD ¶ 345 at 2 (dismissing protest filed by pipe manufacturer challenging specification for piping to be used for chain link fencing on contract for the installation of fencing where the protester, a potential supplier of a component, was not an interested party).

As with the foregoing decisions, IPI fails to demonstrate that it is an interested party to challenge the proposed modification of BAE-OSI’s contract. In this regard, IPI does not represent that it does, can, or will manufacture the propellants and other propellant components currently manufactured by BAE-OSI, which represent the overwhelming majority of the BAE-OSI contract’s requirements.<sup>2</sup> Rather, like the protester in *PPG Industries*, the protester merely argues that the agency should compete a small component of its requirements that the protester is capable of fulfilling. On this record, where IPI at best has demonstrated it is capable of producing less than [DELETED] thousandths of a percent of the government’s current anticipated requirements (or, at most approximately [DELETED] percent if we were to accept IPI’s proffered estimate of the agency’s

---

percent of the proposed ceiling increase (\$[DELETED]/\$402,493,468 million), and approximately [DELETED] percent of the overall contract value inclusive of the proposed ceiling increase [DELETED]/\$825,493,468).

<sup>2</sup> We note that IPI expressly represented that its protest does not challenge any bundling of the government’s requirements under BAE-OSI’s IDIQ supply contract. See Comments at 2.

anticipated requirements), we fail to find that the protester has established that it is an interested party to pursue this protest.

We dismiss the protest.

Thomas H. Armstrong  
General Counsel