



## Decision

**Matter of:** Vigor Marine LLC

**File:** B-420955.2

**Date:** October 31, 2022

---

Stowell B. Holcomb, Esq., Jackson Holcomb, LLP, for the protester.  
Noah B. Bleicher, Esq., Nathaniel E. Castellano, Esq., and Aime JH Joo, Esq., Jenner & Block, LLP, for General Dynamics – National Steel and Shipbuilding Company, an intervenor.  
Timothy S. Taylor, Esq., Martha E. Hulley, Esq., and Lisa Cho, Esq., Department of the Navy, for the agency.  
Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest challenging terms of the solicitation is dismissed as untimely, and we decline to review under the significant issue exception to our timeliness rules where the issue raised would have limited application to future procurements and thus is not of widespread interest to the procurement community.

---

### DECISION

Vigor Marine LLC, of Portland, Oregon, protests the terms of delivery order request for proposals (RFP) No. 0287, issued by the Department of the Navy, Naval Sea Systems Command (NAVSEA), for dry-dock repair and alteration aboard the USS Kansas City (LCS-22). Vigor contends that the solicitation improperly restricts the competition to the ship's homeport offerors.

We dismiss the protest as untimely.

### BACKGROUND

The USS Kansas City is an Independence-class littoral combat ship (LCS) homeported in San Diego, California. Protest at 1. As with all naval vessels, the USS Kansas City regularly requires maintenance, repair, and modernization.

Between February 28, 2018, and August 4, 2021, NAVSEA awarded a total of nine indefinite-delivery, indefinite-quantity (IDIQ) multiple award contracts (MAC) to support the sustainment execution efforts for LCS vessels homeported in San Diego, California. Protest, B-420955, Aug. 12, 2022, exh. 4, LCS IDIQ MAC Awards (2018) at 2; exh. 5, LCS IDIQ MAC Awards (2021) at 1. Relevant to the protest here, at least two of the LCS IDIQ MAC contract holders, General Dynamics – National Steel and Shipbuilding Company (NASSCO) and BAE Systems – San Diego Ship Repair (BAE), operate shipyards in San Diego with dry docks capable of overhauling LCS vessels. Protest, B-420955, Aug. 12, 2022, at 3; exh. 4, LCS IDIQ MAC Awards (2018) at 2.

Also relevant to the protest here is a statute enacted by the Congress regarding the “[c]onstruction of combatant and escort vessels and assignment of vessel projects,” which states, in pertinent part:

(c)(1) Before issuing a solicitation for a contract for short-term work for the overhaul, repair, or maintenance of a naval vessel, the Secretary of the Navy shall determine if there is adequate competition available among firms able to perform the work at the homeport of the vessel. If the Secretary determines that there is adequate competition among such firms, the Secretary--

(A) shall issue such a solicitation only to firms able to perform the work at the homeport of the vessel; and

(B) may not award such contract to a firm other than a firm that will perform the work at the homeport of the vessel.

(2) Paragraph (1) applies notwithstanding . . . any other provision of law.

10 U.S.C. § 8669a(c). For the purposes of the statute, the term “short-term work” means work that will be for a period of 10 months or less. *Id.*, § 8669a(c)(4).

The Navy issued the solicitation on May 26, 2022. Protest, B-420955, Aug. 12, 2022, exh. 1, RFP at 1-151. In general terms, the solicitation seeks a contractor to furnish the material, support, and facilities, and “provide the management, technical, procurement, production, testing and quality assurance necessary to prepare and accomplish the repairs and alterations required” for dry-dock repair and maintenance aboard the USS Kansas City.<sup>1</sup> *Id.* at 36. The delivery order competition, as initially issued, was open to all LCS IDIQ MAC contract holders. *Id.* at 1.

---

<sup>1</sup> The solicitation envisioned a period of performance of 187 calendar days, or approximately 6 months, which meets the definition of “short-term work” for purposes of 10 U.S.C. § 8669a(c). Protest, B-420955, Aug. 12, 2022, exh. 1, RFP at 92; exh. 2, RFP attach. J-5, Execution Milestones rev. 4 at 1.

On August 12, prior to the time set for receipt of proposals, NASSCO filed a protest with our Office challenging the terms of the solicitation. Protest, B-420955, Aug. 12, 2022, at 1-12. Specifically, NASSCO alleged that the RFP was defective for failing to restrict the competition to local (*i.e.*, San Diego) firms as required by 10 U.S.C. § 8669a(c). *Id.*

On August 26, the Navy informed our Office that it was taking corrective action by amending the solicitation and “limit[ing] the request for proposals to LCS IDIQ MAC holders in the homeport area.” Agency Dismissal Request, B-420955, Aug. 26, 2022. We subsequently dismissed the NASSCO protest as academic. *National Steel & Shipbuilding Co.*, B-420955, Sept. 1, 2022 (unpublished decision). Also on August 26, the Navy issued an amendment to the RFP which restricted the place of performance to the San Diego area and provided offerors until August 29 to submit revised proposals. Protest, exh. 1, RFP amend. 14 at 1-2.

On September 9, Vigor filed its protest with our Office.<sup>2</sup>

## DISCUSSION

In its protest, Vigor does not dispute that 10 U.S.C. § 8669a(c) requires the Navy to determine if there is adequate competition available among firms able to perform the work at a vessel’s homeport before issuing a solicitation for short-term overhaul, repair, or maintenance work, and if the agency determines there is adequate homeport competition, the Navy must issue the solicitation only to homeport firms. Protest at 1. Rather, Vigor argues that it is improper for the agency to do so *after* issuing the solicitation, as occurred here. *Id.* at 1-2. In support thereof, Vigor maintains that “[t]he prescribed timing of the [Navy] Secretary’s determination is critical because it prevents the Navy from soliciting proposals from firms outside the vessel’s homeport unless they will be eligible for award and thereby avoids putting such firms to the time and expense of preparing a proposal only to be excluded after proposal submission—as happened to Vigor here.” *Id.* at 1.

In its protest, Vigor recognizes that its challenge is untimely because it was filed after the August 29 closing date for receipt of revised proposals, which was set by the amendment that introduced the homeport restriction. Vigor argues, however, that its protest should be considered under the significant issue exception to our timeliness rules. *Id.* at 2-3 (“While Vigor acknowledges that it did not file a protest prior to the next closing time for receipt of proposals . . .”). In response, the Navy argues that the Vigor protest does not constitute a significant issue and should be dismissed as untimely. Req. for Dismissal at 1-3. We agree.

---

<sup>2</sup> Because the value of the delivery order contemplated here is in excess of \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under IDIQ contracts established pursuant to the authority in title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *Gorod Shtor*, B-411284, May 22, 2015, 2015 CPD ¶ 162 at 2-3; *Dominion Aviation, Inc.--Recon.*, B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3. Of relevance here, our timeliness rules require that a protest based upon alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1); *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Thus, Vigor's protest, filed 11 days after the amended RFP's closing date, is untimely.<sup>3</sup>

As the protester notes, our regulations allow our Office to consider the merits of an untimely protest where good cause is shown or where the protest raises issues significant to the procurement system. 4 C.F.R. § 21.2(c). In order to prevent our timeliness rules from becoming meaningless, however, exceptions are strictly construed and rarely used. *Vetterra, LLC*, B-417991 *et al.*, Dec. 29, 2019, 2020 CPD ¶ 15 at 3. What constitutes a significant issue is decided on a case-by-case basis. *Capital Brand Grp., LLC--Recon.*, B-418656.2, July 9, 2020, 2020 CPD ¶ 231 at 4; *Cyberdata, Techs., Inc.*, B-406692, Aug. 8, 2012, 2012 CPD ¶ 230 at 3. We generally regard a significant issue as one of widespread interest to the procurement community and that has not been considered on the merits in a prior decision. *Vetterra, LLC, supra*; *Baldt Inc.*, B-402596.3, June 10, 2010, 2010 CPD ¶ 139 at 2-3. Moreover, invoking the significant issue exception is a matter entirely within GAO's discretion." *Capital Brand Grp., LLC--Recon., supra*; see also *The Dep't of the Navy; Fairchild Weston Sys., Inc.--Request for Recon.*, B-230013.2, B-230013.3, July 29, 1988, 88-2 CPD ¶ 100 at 2; *Ensign Aircraft Co.*, B-207898.4, May 17, 1983, 83-1 CPD ¶ 520 at 2.

The relevant statute here was enacted in 1982 and last amended (substantively) in 1987. Pub. L. No. 97-295, § 1(48)(A), 96 Stat. 1287, 1298 (Oct. 12, 1982); Pub. L. No. 100-180, § 1101, 101 Stat. 1019, 1145 (Dec. 4, 1987) (initially codified at 10 U.S.C. § 7299a). The protester asserts that it is not aware of any--and we have no reason to doubt--prior decisions from the courts, board of contract appeals, or GAO, that has addressed this specific statute since its enactment. See Protest at 3 n.1. We find, however, that even if the issue here has not been considered on the merits in a prior decision, this issue is not one of widespread interest to the procurement community.

---

<sup>3</sup> Vigor does not allege that it could not have filed its protest challenging the solicitation amendment in question prior to the next closing date. See Protest at 2. In any event, we have explained that when a protester does not have a reasonable opportunity to file such a protest prior to the next closing time, the protester is required to protest the solicitation impropriety no later than 10 days from the time it knew or should have known of its basis for protest. *Microgenics Corp.*, B-419470, Feb. 2, 2021, 2021 CPD ¶ 72 at 4; *WareOnEarth Commc'ns, Inc.*, B-298408, July 11, 2006, 2006 CPD ¶ 107 at 3. Vigor's protest here, filed on September 9, was also not filed within 10 days of the August 26 solicitation amendment which it challenges.

Our determination that an issue is of widespread interest to the procurement community rests upon a conclusion that consideration of the issue would be in the interest of the procurement system. *Ervin & Assocs., Inc.*, B-279083, B-279219, Apr. 30, 1998, 98-1 CPD ¶ 126 at 10; *DynCorp*, B-240980.2, Oct. 17, 1990, 90-2 CPD ¶ 310 at 3. As a general matter, the resolution of an issue that relates only to the protested solicitation does not fall within the exception because it would have no useful application to future procurements. *Ervin & Assocs., Inc.*, *supra*; see also *Reedsport Machine & Fabrication*, B-293110.2, B-293556, Apr. 13, 2004, 2004 CPD ¶ 91 at 3; *R&K Contractors, Inc.*, B-292287, July 23, 2003, 2003 CPD ¶ 149 at 5 n.3. In our view, the resolution of the issue presented in this protest would have limited application to future procurements because the statute in question is of limited applicability.

As provided by the statute, itself, the limitation on contracting for work on naval vessels only applies to: (1) one particular contracting agency (the Navy); (2) the overhaul, repair, or maintenance work of a naval vessel, conducted at its homeport location; (3) instances where the work is short-term in duration (*i.e.*, 10 months or less); and (4) instances where adequate competition exists among firms able to perform the work at the homeport of the vessel in question. 10 U.S.C. § 8669a(c). The fact that there are no prior decisions concerning this statute supports our view, we think, that the provision applies to but a narrow group of federal procurements. Accordingly, we find that interpreting the statute here at present time is not of general interest or value to the procurement system. In sum, while the issue raised is of interest to the protester, it is essentially limited to the specific procurement in issue and not of widespread interest to the procurement community.<sup>4</sup> *Reedsport Machine & Fabrication*, *supra* at 3 (finding “while the issues raised are of interest to the protester, they are limited to the procurements in issue and are not of widespread interest to the procurement community”); *R&K Contractors, Inc.*, *supra*.

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel

---

<sup>4</sup> While we do not review the merits of Vigor’s protest, we note that Vigor’s interpretation of 10 U.S.C. § 8669a(c) would essentially preclude the agency from taking corrective action to remedy a defect with the solicitation--a defect that Vigor does not dispute. Moreover, although Vigor objects to being put through the burden of preparing a proposal in response to the solicitation that was later restricted, an offeror’s preparation of a proposal does not preclude an agency from taking appropriate corrective action. See *URTruckBroker Corp.*, B-416249.2, June 21, 2018, 2018 CPD ¶ 216 at 4 (finding an agency has discretion to take corrective action at any time in the procurement process); *Vinsys Info. Tech., Inc.*, B-418892, Sept. 28, 2020, 2021 CPD ¶ 92 at 3 (finding that, so long as there is a reasonable basis, an agency may cancel a solicitation no matter when the information precipitating cancellation first arises).