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# Decision

**Matter of:** Perimeter Solutions LP

**File:** B-423321; B-423321.2

**Date:** May 6, 2025

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Joseph G. Martinez, Esq., and Alexander N. Cardinal, Esq., Dentons US LLP, for Fortress North America, LLC, the intervenor.

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## DIGEST

Protest is dismissed where the protester is not an interested party to challenge the agency's intended award of a contract on a sole-source basis because the firm does not similarly offer a "conditionally qualified" product.

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## DECISION

Perimeter Solutions LP, of Saint Louis, Missouri, protests the intended sole-source award of a contract to Fortress North America, LLC, of Rocklin, California, under request for proposals (RFP) No. 1202SC25R2500, issued by the Department of Agriculture, Forest Service, for supply of Qela, an aerial long-term fire retardant (LTFR). Perimeter challenges the agency's justification for the sole-source award.

We dismiss the protest.

## BACKGROUND

The agency uses qualified aerial LTFR products applied by airtanker or helicopter to reduce wildfire intensity and the rate of wildfire spread. Memorandum of Law (MOL) at 2; Contracting Officer's Statement (COS) at 1. To become qualified, a manufacturer must notify the agency that it wishes to submit an LTFR product for evaluation. Protest at 4. The manufacturer's product must then satisfy a laboratory evaluation consisting of multiple tests, including uniform corrosion, mammalian toxicity and irritation, combustion-retarding effectiveness, physical properties, materials effects, pumpability,

product stability, and color properties. *Id.* at 4-5; *see also* Agency Report (AR), Tab 2, LTFR Specification, at 17-23.

Based on the results of the laboratory testing, the agency may determine that the product is “fully qualified” or “conditionally qualified.” MOL at 3. “Conditionally Qualified” products require an operational field evaluation (OFE). *Id.*; *see also* AR, Tab 3, OFE Description at 2. The scope of an OFE will vary depending on the product. AR, Tab 3, OFE Description at 2 (“The [OFE] may vary from a slight increase in sampling, to a detailed complex evaluation.”). At a minimum, the OFE will use 200,000 gallons of LTFR. *Id.* If the product passes the OFE, then it will be considered “fully qualified” and added to the qualified products list (QPL). AR, Tab 2, LTFR Specification at 17.

Perimeter currently is the sole supplier of LTFR and ancillary services to the Forest Service under an existing contract. Protest at 5. Perimeter states that its contract provides it with the exclusive right to provide LTFR to the Forest Service, except that the government may purchase 200,000 gallons of a “conditionally qualified” LTFR for field testing. *Id.* Perimeter also explains that its contract provides that the government may only compensate another manufacturer for a “conditionally qualified” product at the same rate it pays to Perimeter. *Id.*

Fortress is a subsidiary of Compass Minerals and is a relatively new manufacturer of LTFR products. COS at 3. In 2022, Fortress obtained full qualification for two products; however, one of Fortress’s products caused significant corrosion for two government aircraft and the agency subsequently removed both products from the QPL. COS at 3-4. As a result, the agency also revised the specification for any LTFR to require that any product use only one or a combination of retarding salts (*i.e.*, diammonium phosphate, monoammonium phosphate, or ammonium polyphosphate). AR, Tab 2, LTFR Specification at 33.

Fortress subsequently sought to qualify another LTFR product, Qela. AR, Tab 4, Letter from Agency to Fortress at 1. In September 2024, the agency reviewed the results of Qela’s laboratory evaluation and determined that the product satisfied all the specification requirements except for corrosion to magnesium coupons (*i.e.*, metal samples). *Id.* at 1-2. In November 2024, the agency determined that the product was “conditionally qualified,” but that an OFE would need to be conducted to ensure that the product does not accelerate corrosion of government aircraft. AR, Tab 7, Internal Correspondence at 1; *see also* AR, Tab 8, Letter from Agency to Fortress at 1. On December 5, the Forest Service officially added Qela to the QPL as “conditionally qualified.” COS at 8.

On January 29, 2025, the Forest Service issued a notice that it intended to award a requirements contract for Qela and ancillary support services to Compass Minerals. AR, Tab 11, Notice of Intent to Award a Sole-Source Contract at 2. The notice explained that only one responsible source offered Qela and cited 41 U.S.C. § 3304(a)(1), as implemented by Federal Acquisition Regulation (FAR) section 6.302-1,

as its authority for issuing the contract on a sole-source basis. *Id.* at 2-3. The notice also provided that any LTFR producers could submit a capabilities statement, proposal, or quotation within 15 days (*i.e.*, by February 13). *Id.* at 3.

In the accompanying “Justification for Other than Full and Open Competition” (JOFC) document, the Forest Service explained the following:

No other contractor has completed the predecessor steps in the QPL process to become conditionally qualified and eligible for an [official field evaluation (OFE)] and therefore the Contractor is the only supplier that meets the authorities specified herein.

AR, Tab 9, JOFC at 2. The JOFC also provided that the agency would order 900,000 gallons of Qela, including 200,000 gallons for regular testing and the other 700,000 gallons for additional testing to ensure that the product can be comingled with other LTFR products and will not accelerate the corrosion of government aircraft. *Id.* at 1-2. Additionally, the JOFC explained that the contract had an estimated value of \$13 million and that the agency will use cost analysis techniques to ensure that the price is fair and reasonable. *Id.* at 1.

On February 7, Perimeter filed this protest with our Office.

## DISCUSSION

Perimeter raises multiple allegations challenging the agency’s use of non-competitive procedures. Principally, Perimeter argues that the agency unreasonably seeks to procure 700,000 gallons for additional testing. Perimeter also argues that the agency will unreasonably procure ancillary services. Additionally, the protester contends that the agency failed to consider its alternate product. Finally, Perimeter asserts that the sole-source award will create an unfair competitive advantage for Fortress.

While presenting arguments countering the merits of protester’s allegations, the Forest Service also argues that Perimeter is not an interested party to raise its challenges. We agree with the agency that the firm does not demonstrate the requisite interest and therefore dismiss the protest without addressing the underlying merits.

The agency argues that Perimeter is not an interested party because the firm does not manufacture Qela. MOL at 11-14. The agency explains that it needs to test Qela to determine whether the product may be considered “fully qualified.” *Id.* 12. Thus, since Perimeter manufactures a competitor product, the Forest Service asserts that Perimeter is not an interested party because it cannot satisfy the agency’s need. *Id.*

Perimeter counters that the firm is an interested party because it also possesses a “conditionally qualified” product eligible for an OFE. Comments at 33; Resp. to Req. for Dismissal at 10. It argues that the agency plans to test only one product this season, and should the agency elect to test Fortress’s product, then it will lose the opportunity to

have its product tested. Perimeter also argues that the agency fabricated the testing requirement to render the firm not an interested party. Supp. Comments at 4.

During the development of this protest, we sought additional information regarding Perimeter's product to aid in our determination of whether the firm was an interested party. Specifically, we inquired:

GAO requests that the agency provide additional information concerning whether Perimeter is an interested party. In so doing, GAO requests that the agency explain whether Perimeter does, in fact, have a "conditionally qualified" product. GAO would appreciate the agency providing additional details explaining why Perimeter's product is "not ready, slated, or planned for an OFE anytime soon." [COS at 19]. The agency should also explain the difference between Perimeter's and Fortress's products. Finally, GAO would appreciate the agency clarifying how the products are different in terms of where they are in the qualification process.

GAO Second Req. for Additional Briefing at 1-2.

In response, the agency explained that it notified Perimeter that one of its products was conditionally qualified in November 2024. Supp. COS at 2; AR, Tab 19, Letter from Agency to Perimeter at 1. However, the agency explains that it is currently revising its testing requirements (*i.e.*, specification) to include additional galvanic corrosion testing.<sup>1</sup> Supp. COS at 2-3. The agency explains that "[r]ecent work showed that adopting a galvanic corrosion test will help screen products that would otherwise meet current corrosion test criteria." *Id.* Further, the agency explains that the lab recommends adopting the test to "maintain a fair and consistent approach to all products currently being test[ed] for eligibility consideration[.]" *Id.*

While Perimeter's product has not yet completed the galvanic corrosion testing, the agency explains that Fortress's product, Qela, has completed this requirement. Supp. COS at 2. As a result, the agency asserts that Perimeter is not an interested party because it does not have a competitor product ready for field evaluation. *See id.* at 4; *see also* MOL at 16.

The protester responds that it is an interested party because its competitor product satisfied required testing and was previously determined to be "conditionally qualified." Resp. to Supp. COS at 3. Additionally, Perimeter asserts that the galvanic testing will be completed soon and that, therefore, the firm still has an eligible product for this year's fire-season. *Id.* at 4-5.

Section 6.302-1 of the FAR authorizes an agency to make a sole-source award if it reasonably determines that there is only one responsible source capable of meeting its

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<sup>1</sup> Galvanic corrosion testing is corrosion testing of two dissimilar metals in a solution. Supp. COS at 2.

needs. In this context, the agency must give meaningful opportunity to prospective alternative sources to demonstrate their ability to provide what the agency seeks to procure. *Ho-Olaulima Gov't Sols., LLC*, B-421958, B-421958.2, Dec. 19, 2023, 2024 CPD ¶ 10 at 7.

Critically, a contracting agency has the discretion to determine its needs and the best method to accommodate them. *Ho-Olaulima Gov't Sols., LLC*, *supra*. A protester's disagreement with the agency's needs and how to best accommodate them, without more, does not show that the agency's judgment is unreasonable. *Id.*

Additionally, only an "interested party" may file a protest. 4 C.F.R. § 21.0(a)(1). That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or the failure to award a contract. *Id.* A protester does not qualify as an interested party if the protester is not eligible to receive a contract award were its protest to be sustained. *Meridian Knowledge Sols., LLC*, B-420906, Nov. 2, 2022, 2022 CPD ¶ 270 at 10.

On this record, we find that Perimeter is not an interested party. Even if we concluded that the agency unreasonably restricted competition, Perimeter would not be positioned to compete for an award. Our review of the record shows that Fortress's product has completed the new galvanic corrosion test while Perimeter's relevant products have not.<sup>2</sup> While Perimeter may argue that one of its products is "conditionally qualified" because it received a letter notifying the firm to that effect, we note that the determination of whether Perimeter's product is ready for a field evaluation is a discretionary matter reserved to the agency; in this regard, the Forest Service has explained that Perimeter's product must undergo the galvanic corrosion test and that it will issue a new letter communicating this fact. Supp. COS at 3; see *Automated Power Sys., Inc.*, B-224203, Feb. 4, 1987, 87-1 CPD ¶ 109 at 3 (explaining that whether a product needs to be retested for inclusion on a qualified products list is a discretionary matter which we will not object to absent a showing that the determination lacked a reasonable basis). Thus, Perimeter is not an interested party because, even if we were

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<sup>2</sup> Perimeter has two products, Phos-Chek MVP-Fx0532-048A and Phos-Chek MVP-Fx0532-096A, currently undergoing the qualifications testing. Supp. COS at 2. The agency explains that one of the products will complete the galvanic corrosion testing in mid-May 2025 and the other product by June or July 2025. *Id.*

Perimeter argues that it is an interested party because one of its products will complete the testing requirement in the next few weeks. We are unpersuaded. First, we determine whether a party is interested based on the current record, which, as noted above, shows that Perimeter's product has not yet satisfied the new galvanic corrosion testing requirement. Second, an agency need not forgo meeting current needs solely based on the prospect of enhanced future competition where it has an undisputed need involving a matter of public safety. *Smiths Detection, Inc.*, B-420110, B-420111, Nov. 5, 2021, 2021 CPD ¶ 359 at 7

to sustain its protest, the firm is not currently capable of competing for a contract to have a product tested.

Additionally, we have no basis to conclude that the agency fabricated the testing requirement. The agency has reasonably explained that the new test is necessary to ensure that any LTFR products do not accelerate corrosion, as well as maintain a fair qualifications process. The record also shows that the agency started revising its specification to include the additional testing requirement as early as November 2024. AR, Tab 7, Internal Agency Memorandum at 1 (explaining that the agency's National Technology and Development Program (NTDP) "is currently working [Fire and Aviation Management] and the National Institute of Standards and Technology to update [the specification] to include additional laboratory testing that would identify revisions and the addition of other corrosion tests to reduce or eliminate the corrosion concerns").

Moreover, Perimeter's product simply does not fulfill the agency's need. The agency explains, and our review of the record confirms, that it needs to determine whether Qela is a viable LTFR product. Testing Perimeter's product simply has no bearing on determining whether Qela is viable. In any event, the agency explains that it will likely acquire any amount of Perimeter's product needed for testing through a sole-source acquisition as well. MOL at 19-20 ("More importantly, under the Forest Services' testing specification, each candidate's product must be tested. In this case, Forest Service is seeking Qela to test Qela. If and when additional products are ready for [a field examination], those products will each have to be acquired and presumably will be acquired on a sole-source basis from each manufacturer."). Accordingly, we dismiss the protest.

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel