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Decision

Matter of: Veteran Design and Construction Inc.

File: B-419224.2

Date: October 23, 2026

Alan Grayson, Esq., for the protester.
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Thompson Hine LLP, for C&C Contractors, LLC, the intervenor.
Kathleen Ramos, Esq., Department of Veterans Affairs, for the agency.
Michael Willems, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

A contractor terminated for default is not an interested party to challenge the award of a reprocurement contract for the remaining work on the defaulted contract, even where the contractor is in the process of challenging the default termination.

DECISION

Veteran Design and Construction Inc. (VDCI), a service-disabled, veteran-owned small business (SDVOSB) of Catonsville, Maryland, protests the award of contract No. 36C10F26C0012 to C&C Contractors, LLC, an SDVOSB of Notasulga, Alabama, by the Department of Veteran Affairs for completion of unfinished work and the correction of deficient work on a previously awarded major construction project at the Cape Canaveral National Cemetery located in North Mims, Florida.

We dismiss the protest because the protester is not an interested party to advance most of its arguments, and because the remaining protest grounds are legally insufficient.

BACKGROUND

The protester was previously awarded a contract on December 28, 2021, for a requirement to build additional interment space to provide burial services for veterans at the Cape Canaveral National Cemetery. See Agency Req. for Dismissal, exh. 2, VDCI Contract at 1. While the parties disagree about what occurred during the course of performance, the agency represents that the protester failed to properly align the crypts, failed to correctly install sod, and did not complete the project on time. Agency Req. to

Dismiss, exh. 1, Contracting Officer's Statement (COS) at 1. The agency represents that it sent many emails, letters of concern, and ultimately a show-cause notice, but the protester failed to correct these errors. *Id.* By contrast, the protester argues that it completed more than 98 percent of the work under the contract before the agency, without explanation, directed the protester to stop work. Protest at 2; Opposition to Agency Req. for Dismissal at 4.

In any case, it is undisputed that the agency terminated the protester's contract for default on May 13, 2025, and the protester appealed its termination to the Civilian Board of Contract Appeals. Protest at 2. That appeal is still pending. Agency Req. to Dismiss at 2. Following the termination, the agency represents that it had an urgent need to complete the work and fix the work that was incorrectly performed because the cemetery in question was rapidly running out of interment space. COS at 1. The agency entered into negotiations with the protester's surety to complete the project, and the surety received offers from four firms to complete the work. *Id.* Ultimately, the surety declined to take over the work, and the agency terminated the surety for default, and was compelled to reprocure the requirement itself. *Id.* The agency then negotiated with the lowest-priced of the four offerors that responded to the surety, and made award to C&C Contractors on September 29, 2026. *Id.* This protest follows.

DISCUSSION

The protester advances two principal arguments. First, the protester argues that the agency's reprocurement is in fact an illegal sole-source award that does not meet the Federal Acquisition Regulation's (FAR) requirements for full and open competition to the maximum extent practicable. Protest at 2-7; Opposition to Agency Req. to Dismiss at 3-10. The protester argues that this is the case, in part, because it alleges that the reprocurement contract may exceed the scope of the work under the original contract. *Id.* Second, the protester argues that the agency improperly excluded it from competing on this reprocurement effort because it is ready, willing, and able to complete the work, and the protester is actively challenging the default termination. *Id.*

In response, the agency argues that the FAR and our decisions are clear that an agency has great flexibility in the procedures it uses when reprocuring a contract, and that an agency need not solicit a defaulted contractor when seeking to reprocure. Agency Req. to Dismiss at 2-7. For these reasons, the agency argues that the protester is not an interested party to raise these arguments and asks that we dismiss the protest. *Id.*

As a preliminary matter, with regard to the repurchase of supplies or services not delivered under a contract terminated for default, FAR 49.402-6(b) provides that a contracting officer "shall obtain competition to the maximum extent practicable." That said, section 49.402-6(b) of the FAR further provides that if the repurchase is for a quantity not over the undelivered quantity, the contracting officer may "use any terms and acquisition methods deemed appropriate for the repurchase." While we recognize, as a general rule, that the statutes and regulations governing regular procurements are

not strictly applicable where the government seeks cover after default, also called repurchase, our Office will typically review such a procurement to determine whether the contracting agency acted reasonably under the circumstances. *Derm-Buro, Inc.*, B-400558, Dec. 11, 2008.

However, relevant here, our Office has specifically held that an agency may properly exclude a defaulted contractor from a repurchase for the remaining work in the defaulted contract. *Colonial Press International, Inc.*, B-403632, Oct. 18, 2010; *Essan Metallix Corp.*, B-310357, Dec. 7, 2007, at 2-3; *Montage, Inc.*, B-277923.2, Dec. 29, 1997, at 3 (all concluding that, although competition to the maximum extent practicable must be obtained in a repurchase, that standard does not mean that an agency must consider an offer from a defaulted contractor for the repurchase of the same work for which it was defaulted). Indeed, our decisions on this point are emphatic that, in light of the broad authority accorded contracting officers by FAR 49.402-6, we will not review an agency's decision not to solicit a defaulted contractor in a repurchase of the same work. *Essan Metallix Corp, supra*; *Montage, Inc., supra*. Our decisions have applied this rule even in circumstances where a defaulted contractor had a pending appeal of its default termination before a Board of Contract Appeals. See *Colonial Press International, Inc., supra*.

Here, the fact that the protester was terminated for default is not in dispute, although the protester clearly disputes the propriety of that termination and is pursuing an appeal (the resolution of which presents a question of contract administration not for our consideration as part of our bid protest function, 4 C.F.R. § 21.5(a)). Our decisions are clear that the agency has the discretion to exclude the protester from a repurchase competition, and we will not review an agency's decision to exclude a defaulted contractor from a repurchase of the contract on which it defaulted. *Essan Metallix Corp, supra*; *Montage, Inc., supra*. For that reason, the protester is not an interested party to maintain the majority of its challenges. See *Montage, Inc., supra* (concluding that a defaulted contractor was not an interested party to challenge whether the agency obtained competition to the maximum extent practicable in a repurchase as required by FAR 49.402-6, because it was ineligible to compete). Accordingly, the protester's challenges to the agency's decision to exclude it from the repurchase and to the manner in which the agency conducted the repurchase are dismissed.

However, the protester is potentially an interested party to pursue one aspect of its current protest. Specifically, the protester argues that the awarded repurchase contract includes additional work not part of the original scope of the work, and accordingly is an illegal sole source contract.¹ See, e.g., Protest at 6; Opposition to

¹ The protester also implies that the repurchase may also be inappropriate because the original contract's period of performance has already ended. See Protest at 6 (*citing Steel Point Solutions, LLC*, B-418224, B-418224.2, Jan. 31, 2020). However, the decision relied on by the protester for that proposition concluded that a repurchase contract for ongoing recurring services could not be extended beyond the original period
(continued...)

Agency Req. for Dismissal at 5. That is, if the agency's reprocurement contract improperly exceeded the original contract's scope, the agency would need to seek full and open competition and the protester argues it would be eligible to compete. See FAR 49.402-6(b). However, this argument concerning the scope of the reprocurement fails to establish a legally sufficient basis of protest because it is speculation unsupported by credible evidence. In this regard, the only evidence that the protester provides in support of its claim that the reprocurement contract exceeds the scope of the original contract is its own claim that it had already completed 98 percent of the work, and the fact that the reprocurement contract is valued at approximately \$7 million.² See Protest at 2-3.

In this regard, the agency represents that the contract at issue in this protest is not only a reprocurement to complete the work not finished by the protester, but also to fix inadequate work that the protester incorrectly performed. COS at 1. The agency also represents that the reprocurement contract sought completion of the original contract with no changes to the statement of work from the original contract. Agency Req. to Dismiss at 2. This representation is consistent with other information available in the record. See Award Notice at 3 ("[t]he purpose of this contract is to complete unfinished work and correct deficient work remaining from a defaulted Department of Veterans Affairs major construction contract for the Phase 2 Expansion at Cape Canaveral

of performance of the contract to be reprocured. *Steel Point Solutions, LLC, supra*. By contrast, this contract is not for ongoing services, but rather for the performance of discrete, non-recurring construction, and the protester's proposed application of our decision in *Steel Point* to these facts would lead to clearly inappropriate outcomes.

For example, under the protester's reading, if a contractor failed to deliver goods by the required delivery date and was terminated for default due to failing to meet the delivery date, then the agency would be barred from seeking reprocurement because the delivery date had already passed, effectively defeating the purpose of the FAR's repurchase provisions. See FAR 49.402-6. This is clearly not an outcome contemplated or required by the FAR or our decisions as it would make the reprocurement process meaningless in such cases. In this case, the protester was terminated, among other reasons, for failing to complete the work in the required time, and we see no basis to conclude that the agency was barred from seeking reprocurement simply because the protester did not complete the work on time.

² The protester also alleges, without any corroborating evidence, that the agency sought to add "substantial" additional work as part of its negotiations with the surety. See Opposition to Agency Req. for Dismissal at 5. Even taking this as true, it is not clear how the agency's negotiations with the surety prior to the surety's subsequent termination for default are relevant: the surety is not a party to this protest, and the contract challenged here is a contract negotiated directly between the agency and the intervenor. Put another way, even if the agency previously sought to increase the scope of work in its negotiations with the surety, that fact does not provide meaningful evidence about the scope of the subsequent contract negotiated by the agency with the intervenor, which is at issue here.

National Cemetery”). Further, we note that the protester’s original contract was valued at approximately \$33 million, and the agency’s termination for default notice estimated that 20 percent of the work was still outstanding at that time. Agency Req. to Dismiss, exh. 2, VDCI Contract at 1; exh. 3, Termination for Default Notice at 1.

Our decisions contemplate that a protester must provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester’s claim of improper agency action. See *Warfighter Focused Logistics, Inc.*, B-423546, B-423546.2, Aug. 5, 2025, at 4. Here the protester’s allegations are simply not adequately supported by evidence and are therefore not credible. For example, while the protester alleges it already performed 98 percent of the work--which the agency contests--the agency is not only seeking to complete work that was never started by the protester, but also to fix deficient work already partially performed by the protester. Against that background, the protester’s claim that it already performed 98 percent of the work is simply irrelevant to the scope of the reprocurement contract because the contract, on its face, expressly contemplates that some portion of the work already done by the protester is deficient and must be redone. That is, the protester self-assessed project completion rate, even if we assume it to be true, does not actually contradict the agency’s rationale or meaningfully support any inference of improper agency action on these facts.

Likewise, the fact that the reprocurement contract is valued at \$7 million, which is approximately 21 percent of the original contract scope, simply does not support an inference that the reprocurement effort exceeds the scope of the original requirement. The agency’s contemporaneous conclusion in the termination for default notice was that approximately 20 percent of the work remained outstanding, which is roughly consistent with the size of the reprocurement contract. Indeed, the appropriateness of the size of the contract is further supported by the protester’s own pleadings, which argue that the agency declined to pay approximately \$7 million in claims filed by the protester leading up to the termination for default. Opposition to Agency Req. for Dismissal at 4 n.5. This indicates that the agency declined to accept approximately \$7 million worth of work from the protester, which is very similar to the scope of the reprocurement contract. Even reading the facts alleged in the protester’s pleadings in the light most favorable to it, the size of the reprocurement contract simply does not give rise to any inference of impropriety.

In short, the protester has not provided any credible evidence that meaningfully supports its allegation that the reprocurement contract impermissibly exceeds the scope of the goods or services procured under the original contract, and so this aspect of the protest is dismissed as legally insufficient.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel