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**United States Government Accountability Office
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Decision

Matter of: NAC International, Inc.

File: B-310065

Date: November 21, 2007

Daniel F. Stenger, Esq., Michael D. McGill, Esq., and Deborah A. Raviv, Esq., Hogan & Hartson LLP, for the protester.

Robert H. Thompson, Esq., and Jarom T. Smartt, Esq., Tennessee Valley Authority, for the agency.

Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The Tennessee Valley Authority (TVA), while a federal agency subject to GAO's bid protest jurisdiction under the Competition in Contracting Act (CICA), has its own statute, the TVA Act, which governs the agency's procurement procedures; as a result, the TVA is not subject to CICA's requirement to obtain "full and open competition" and is not required to comply with the Federal Acquisition Regulation.
2. Protest challenging terms of solicitation as unduly restrictive is denied where agency had reasonable basis to conclude it would receive proposals that satisfied the agency's statutory requirement to obtain "adequate competition."

DECISION

NAC International, Inc. protests the terms of request for proposals (RFP) No. SWO-200701, issued by the Tennessee Valley Authority (TVA) for provision of storage units for spent nuclear fuel at two TVA facilities. NAC contends that the solicitation is unduly restrictive of competition because its schedule of initial deliveries can only be met by the incumbent contractor.

We deny the protest.

BACKGROUND

The TVA is a federal corporation which, among other responsibilities, provides power for a large area of the southeastern United States. The TVA operates various

power plants including the Brown's Ferry Nuclear Plant, near Decatur, Alabama, and the Sequoyah Nuclear Plant, near Chattanooga, Tennessee. Both plants are licensed and operated in accordance with regulations issued by the Nuclear Regulatory Commission (NRC). The TVA's facilities at Brown's Ferry and Sequoyah are powered by enriched uranium that must be replaced after its useful energy is expended and subsequently stored at an on-site independent spent fuel storage installation (ISFSI). These installations are also regulated by the NRC. See 10 C.F.R. part 72 (2007). The "spent" uranium fuel is transferred from the power reactors into cooling pools, and then transferred to "dry cask" storage units, which consist of steel interior canisters into which the fuel and an inert gas is placed, and a "overpack" casing into which the interior casing is placed. These dry cask units are then moved from the pool area to a storage pad at the ISFSI through use of a "transfer cask" during a planned "campaign" event.

Dry casks must receive a certificate of compliance (COC) from the NRC before they may be used for storage of spent nuclear fuel. A COC addresses a cask's technical specifications including, for example, the type and amount of fuel to be stored and the materials and manufacturing methods for the cask. A COC is issued without regard to the specific site where a cask may be used, but contains conditions for the cask's use. See 10 C.F.R. §§ 72.230-72.248. The licensee of a nuclear plant must determine that the terms of a cask's COC are compatible with the conditions at the nuclear plant where it is to be used. 10 C.F.R. § 72.212(b)(2). If a plant licensee, such as TVA, intends to change the type of cask used for storage of spent fuel at its ISFSI, the licensee must conduct a new evaluation to determine whether the new cask COC is compatible with the site conditions. See id.

The TVA currently receives its dry casks for its Brown's Ferry and Sequoyah facilities from Holtec International under a contract that was competitively awarded in 2000, and was subsequently extended beyond its original term; the contract is due to expire following deliveries in 2008. In determining how to meet its future requirements for these facilities, the TVA considered extending Holtec's contract, but determined that "recompetition was necessary given that the original contract term has already been exceeded and that future sole source extension might allow Holtec to charge unreasonable prices." Contracting Officer's (CO) Statement at 3. The agency prepared and circulated a preliminary acquisition plan for its cask requirements in January 2006. Agency Report (AR), Tab 57, Presentation on Cask RFP. The TVA then conducted market research with the [deleted] companies considered to represent the potential market for dry casks: NAC, Holtec and [deleted].

As relevant here, NAC expressed concern to the TVA in March 2006 regarding potential challenges that a non-incumbent would face in providing new casks for use at the TVA facilities, as follows:

We believe there are no technical issues associated with the transition that can't be directly solved, but a plant transitioning its dry storage

technology would typically plan an [deleted] month cycle from the contract execution date through the initial equipment delivery dates. Subsequent system orders can easily be delivered within a [deleted] month cycle time. Clearly, there are several one-time issues to be addressed when deploying a different storage technology, which result in some additional work for TVA and its supplier. These items are not significant obstacles, but require an adequate amount of time to accomplish, and would extend the typical system delivery cycle. We believe we can satisfactorily address all of these issues individually, but the schedule risk increment for either [deleted] or NAC is attributable exclusively to additional work that must be accomplished and to additional equipment that must be delivered and integrated to effect the transition. NAC is concerned that this schedule risk would likely result in the current supplier being the only bidder who can meet your current schedule with an acceptable level of delivery risk to TVA.

AR, Tab 52, Email from NAC to CO, Mar. 15, 2006.

In October 2006, the TVA invited potential offerors to make presentations regarding the proposed procurement. As relevant here, [deleted]'s presentation stated that it was the "ONLY vendor that has gone from contract award to fuel loading of a NEW ISFSI in less than 24 months. We have now done it [deleted] times." AR, Tab 44, [deleted] Presentation, at 13. [Deleted] listed four examples of such transfers, two with durations of 23 and 24 months, and two with durations of 18 months each. *Id.* As the TVA notes, an ISFSI is the entire facility for storage of spent nuclear fuel, and the process that [deleted] referred to in its presentation was the establishment of a new facility. Supp. AR at 11. Thus, the agency understood [deleted] to mean that the company would require less time to achieve a transition to a new cask model, as compared with the time required to establish an entirely new ISFSI. *Id.* In particular, the agency understood [deleted]'s presentation's reference to "contract award to fuel loading" to mean that actual delivery of the dry casks would be less than the times identified, as casks needed to be delivered prior to loading. CO Statement at 4.

In its October presentation, NAC again expressed concerns regarding the transition effort associated with the selection of a non-incumbent contractor, including cost, compatibility of an offeror's COC with existing site conditions, and availability and rental of support equipment. AR, Tab 46, NAC Presentation, Oct. 17, 2006, at 22. NAC did not, however, identify any particular time frame that it believed would be required for a non-incumbent to perform the transition and initial delivery of requirements. Instead, NAC stated that its proposed Magnastor cask model, was "similar to [Holtec's] current system," that the COC verification process would be "very similar," and that NAC anticipated that it could [deleted]. *Id.* at 26.

Although NAC has COCs for two existing cask models, *see* 10 C.F.R. § 72.214, its presentation to the TVA addressed [deleted] its Magnastor cask model, which does

not yet have a COC. NAC stated in its presentation that it expected a draft COC from the NRC by January 2007. Id. at 16. In January 2007, however, NAC withdrew its COC application for the Magnastor model due to NRC concerns; NAC stated that it would resubmit the application at a later date. AR, Tab 36, Email from NAC to CO, Jan. 31, 2007.

On June 14, 2007, the TVA issued the solicitation, seeking dry casks and/or pool-to-pad transfer services. The RFP anticipates award of a fixed-price contract with a base period of 5 years, with an option for an additional 5-year term. The agency advised offerors that it anticipated making a contract award by the end of December 2007. CO Statement at 6. The RFP's schedule of initial deliveries requires the contractor to provide an initial delivery of casks by May 4, 2009. RFP at 53, attach. 7.2.3. The RFP states that the contractor will be required to support the TVA in verifying that the cask COC is consistent with the facility site conditions and the TVA's licenses. RFP, Procurement Specification, at 10, § 1.5. The RFP lists 21 items that must be submitted by the contractor to the TVA for review in the verification process. Id. § 1.6.1.2. The RFP also "strongly encourage[s]" offerors to submit alternative proposals, provided that the alternatives have received a COC by no later than January 2008. Id. § 1.4.

The initial due date for proposals was July 31, 2007. On July 2, a NAC representative called the CO and advised that it would not be able to submit a proposal because the company would not likely receive a COC for its Magnastor cask until [deleted]. On July 10, NAC requested that the time for proposals be extended; the agency extended the due date until August 21. On August 17, NAC filed this protest with our Office. The agency received proposals from [deleted] and Holtec by the August 21 due date; NAC did not submit a proposal.

DISCUSSION

NAC contends that the TVA has unreasonably restricted competition because only the incumbent can meet the RFP's schedule of initial deliveries. The protester also argues that the competition is unreasonably restricted because the RFP's provisions for submitting an alternative proposal do not allow sufficient time for submission, and because the anticipated length of the contract is too long. For the reasons discussed below, we conclude that the RFP does not inherently preclude non-incumbents from meeting its requirements, and that TVA has not otherwise limited competition in a manner that warrants sustaining the protest.¹

¹ NAC's protest argues that the schedule of initial deliveries is so restrictive that only the incumbent can meet it, or meet it without significant schedule risk. Protest at 1-2. Although the protest seemingly addresses two issues, *i.e.* impossibility and significant schedule risk, the protester essentially contends that a non-incumbent cannot perform. In this regard, NAC argues that the schedule of initial deliveries is

(continued...)

As a threshold matter, the parties disagree about the application of the Competition in Contracting Act of 1984 (CICA) to TVA procurements, and specifically about the standard for competition that applies to a TVA procurement.² As a general rule procuring agencies are required to obtain full and open competition in the procurement of supplies and services through the use of competitive procedures in accordance with the Federal Acquisition Regulation (FAR). 41 U.S.C. § 253(a)(1)(A). An exception to this requirement exists for “procurement procedures otherwise expressly authorized by statute.” 41 U.S.C. § 253(a)(1).

Procurements for the TVA are governed by Section 9(b) of the TVA Act, which states that the agency shall procure its requirements as follows:

All purchases and contracts for supplies or services, except for personal services, made by the [TVA], shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the [TVA] Board shall determine to be adequate to insure notice and opportunity for competition.

16 U.S.C. § 831h(b); see also Sylvest Mgmt. Sys. Corp., B-275935, B-275935.2, Apr. 21, 1997, 97-1 CPD ¶ 172 at 3.

With regard to the term “adequate competition,” the TVA Board determined, consistent with its authority under the FPASA, that the agency “provides ‘notice and opportunity for competition’ when TVA solicits offers in such a manner that it is

(...continued)

set for 16.5 months after award, whereas a non-incumbent will require a minimum of 22 to 30 months to deliver the first casks. Protest at 4. Thus, the issues of impossibility or significant schedule risk pose essentially the same question: whether the TVA should have reasonably expected to receive acceptable proposals from any offeror other than Holtec.

² TVA also argues that it is not subject to the bid protest jurisdiction of our Office under CICA. Our Office has jurisdiction under CICA to hear protests related to the award of contracts by federal agencies. 31 U.S.C. § 3551(3). The Federal Property and Administrative Services Act of 1949 defines the term “federal agency” as including any “executive agency,” which is in turn defined as including any executive department or independent establishment in the executive branch of the government, and any wholly-owned government corporation. 40 U.S.C. § 102(4), (5). The TVA is a wholly-owned federal corporation, see 16 U.S.C. § 831, and is therefore a federal agency subject to the bid protest jurisdiction of our Office. We have reached this conclusion in several decisions. See Monarch Water Sys., Inc., Aug. 8, 1985, 85-2 CPD ¶ 146 at 5-9; Sylvest Mgmt. Sys. Corp., B-275935, B-275935.2, Apr. 21, 1997, 97-1 CPD ¶ 172 at 3.

reasonable to expect that two or more offerors will submit acceptable offers competitive with market prices.” AR, Tab 66, TVA Code IV Procurement, Feb. 13, 1991. Further, the Board determined that it is “impracticable for TVA’s procurement activities to be subject to the procurement regulations issued by the General Services Administration under the Federal Property and Administrative Services Act or to the Federal Acquisition Regulations.” Id.

In sum, although the TVA is an agency subject to the bid protest jurisdiction of our Office under CICA, the TVA is exempt from the full and open competition standard under CICA and the FAR because the agency’s procurement procedures are authorized by a separate statute. When the standard requirements for full and open competition under CICA and the FAR do not apply to procurements that are within our Office’s jurisdiction, we will review agency actions to determine whether they were reasonable and consistent with any statutes and regulations that do apply. Quick! The Printer, B-252646, July 20, 1993, 93-2 CPD ¶ 42, at 4. We will therefore review this protest under the “adequate competition” standard discussed above.³

A. TVA’s Reasonable Expectation of Receiving Adequate Competition

NAC contends that TVA did not have a reasonable basis to expect, based on its exchanges with potential offerors, that it would receive two or more acceptable proposals and thereby satisfy its requirement for adequate competition. NAC does not dispute that the agency had a reasonable expectation of receiving an acceptable proposal from the incumbent, Holtec. Thus, under the “adequate competition” standard discussed above, the TVA would satisfy its requirement for competition if it had a reasonable expectation of receiving an acceptable proposal from at least one additional offeror. The protester argues that the agency’s expectation of receiving an acceptable proposal from NAC or [deleted] was unreasonable because: (1) the solicitation schedule for initial delivery is so restrictive that only the incumbent can perform, and (2) the actual exchanges with offerors did not provide the TVA a reasonable basis to expect receiving an acceptable proposal from NAC or [deleted]. In this regard, NAC contends that a non-incumbent will require a minimum of 22 months “for any chance” to meet the delivery schedule of initial deliveries, and at least 30 months for a “reasonable certainty” of meeting the schedule. Protest at 4.

³ NAC argues that notwithstanding the TVA’s determination that its statutory requirement to obtain adequate competition is satisfied by an expectation of receiving two or more acceptable proposals, the agency is still obligated to provide a willing offeror an opportunity to compete by avoiding unduly restrictive solicitation requirements. The protester’s argument, however, suggests a superseding requirement to maximize competition that would render meaningless the “two or more” standard adopted by the TVA.

For the reasons discussed below, we conclude that the agency's expectation of competition at the time the solicitation was issued was reasonable.⁴

1. Schedule of initial deliveries

As an initial matter, the parties disagree as to the length of the schedule of initial deliveries under the solicitation. NAC contends that the solicitation calls for delivery less than 17 months from the anticipated contract award, while the TVA contends that the delivery schedule provides for 17 to 18 months. As discussed above, the agency advised offerors that the contract would be awarded by late December 2007, and the RFP states that first delivery is due on May 4, 2009. Thus, the record supports the protester's interpretation of an approximately 16.5-month schedule of initial deliveries.⁵

As for the specific obstacles for non-incumbents under the solicitation, NAC identifies two primary issues that affect the schedule of initial deliveries.⁶ First, the protester contends that the TVA's approval of a non-incumbent offeror's cask for use at the facilities will require, among other things, a detailed submission of data by the contractor and analysis of the cask's COC by the TVA to ensure that the site conditions at each facility are compatible with the COC. Although the protester argues that this process will not allow a non-incumbent sufficient time to meet the

⁴ The protester notes, and we agree, that the record contains almost no contemporaneous documentation of the agency's rationale for its judgment that it would receive adequate competition. The rationale, instead, is provided in the agency's response to the protest. Because this protest challenged whether the agency had a reasonable basis for issuing the solicitation with the allegedly restrictive provisions, as opposed to subjective proposal evaluations, we will consider the entire record, e.g. the agency's market research and the agency's response to the protest.

⁵ The agency states that in response to a question from an offeror, the agency advised that the delivery schedule could be delayed by 2 to 3 months. AR, Tab 4, Agency Response to Offeror Questions, Aug. 14, 2007. NAC contends that the agency's response did not clearly modify the RFP. We do not think that this issue has any effect on the merits of the protest because, even if the agency had expressly modified the solicitation, the schedule of initial deliveries would still be less than the minimum 22 months NAC claims is required for a non-incumbent to perform the contract.

⁶ In pursuing this protest, NAC has raised various collateral issues regarding the schedule of initial deliveries, as well as other areas of its protest. We have reviewed all of the protester's arguments, and conclude that none provides a basis for sustaining the protest.

schedule of initial deliveries, the protester merely cites general concerns regarding difficulties in the process.⁷

For example, NAC argues that several statements by the CO demonstrate that the process of approving a cask for use at a storage facility will be difficult. In particular, the CO's response to the protest included the following comments regarding the COC validation process:

The use of casks for storage requires both the cask supplier and the plant licensee (including TVA) to perform rigorous, expensive engineering and documentation [efforts] to comply with their respective obligations with NRC rules at 10 C.F.R. part 72. . . .

If a plant licensee intends to change from one cask model to another, the site evaluation must be reformed with reference to the intended new model. Depending on the circumstances, reevaluation might be somewhat less involved than the initial evaluation, but it is still a significant effort.

CO Statement at 2-3.

Although the protester contends that the CO's acknowledgement of a "significant" level of effort implies a lengthy process for validating a non-incumbent's cask and COC, the CO's statement does not indicate a specific time frame. Thus, the CO's statement here does not directly support the protester's argument that non-incumbents will be unable to meet the schedule of initial deliveries.

Second, NAC points to the list of 21 items that must be submitted by the contractor to the TVA for review in validating a new cask's COC. RFP, Procurement Specification, § 1.6.1.2. NAC argues that the list represents a lengthy process that will prevent a non-incumbent contractor from having enough lead-time to begin the

⁷ NAC's only attempt to estimate the actual times required for efforts associated with meeting the schedule of initial deliveries is found in a chart in its comments on the agency's supplemental report. Protester's Comments on Supp. AR at 2. This chart purports to identify a range time for various events, and concludes that a non-incumbent would need at least 26 months to meet the schedule (a length of time different than identified elsewhere in its protest). *Id.* The protester does not, however, clearly explain how it arrived at the various times illustrated in this chart and, more importantly, does not explain the various assumptions underlying the start times for milestones in the chronology. Because this chart lacks a clear explanation for its assumptions, we do not think it provides persuasive support for the protester's arguments.

manufacturing process and meet the initial delivery deadline.⁸ NAC cites as support for its argument NRC guidance that the COC validation, detailed in 10 C.F.R. § 72.212, will require 18 staff-months of effort. See Protester's Comments on the Supp. AR, at 5 (citing NRC "General License Considerations," available at: <http://www.nrc.gov/waste/spent-fuel-storage/sf-storage-licensing/license-considerations.html>.)

As the agency notes, however, NAC does not distinguish in its arguments between the effort needed for the initial establishment of a new ISFSI, as opposed to the less onerous requirements for changing the dry cask model used in an established ISFSI. In this regard, the TVA states that the approval process required for a change of casks at an established ISFSI is less complex and requires less time than the initial establishment of a new ISFSI. Supp. AR at 11-12. Although NAC argues that many of the requirements that the TVA must undertake in evaluating a new storage cask are the same as those required for establishment of an ISFSI, the protester fails to meaningfully rebut the agency's position. In this regard, the protester does not explain whether the 18 staff-month timeframe cited in the NRC guidance is related to an initial ISFSI establishment and cask COC validation, or a reevaluation for the transition to a different cask; in fact, the NRC guidance appears to address the initial process of approving an ISFSI, and therefore addresses more requirements than those that may be required under the instant solicitation. On this record, we conclude that the protester has not provided a sufficient basis to challenge the reasonableness of the RFP's schedule of initial deliveries. A protester's mere disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. USA Fabrics, Inc., B-295737, B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 5.

Next, NAC argues that, in addition to the 6 to 12 months required for approving a non-incumbent's COC for use at the TVA facilities, the fabrication process will require a minimum of 16 to 20 additional months for a non-incumbent to complete--resulting in, as discussed above, an overall 22 to 30 month minimum time for a non-incumbent to meet the schedule for initial delivery. The protester identifies two aspects of the fabrication process it contends will contribute to long lead-times and delay a non-incumbent's performance: manufacturing a new transfer cask, and the availability of steel. The transfer cask is used to transport each dry cask from the pool storage area to the outdoor storage pad. Protester's Comments on AR, at 11; Supp. AR at 8.

⁸ The parties also disagree as to whether COC validation stage must be done first, or whether some tasks can begin prior to full approval. The TVA states, and NAC largely concedes, that portions of the cask fabrication process can begin prior to the TVA's final evaluation and approval. CO Statement at 6; see Protester's Comments on Supp. AR, at 10.

Again, however, the protester does not clearly explain why that length of time is required. NAC's argument that the fabrication of a transfer cask will require 16 to 20 months appears inconsistent with its earlier statements made during the agency's market research. As discussed above, NAC advised the agency in March 2006 that NAC believed that a "typical" change in cask technology would take [deleted] months from contract award to initial delivery. AR, Tab 52, Email from NAC to CO, Mar. 15, 2006. Even assuming that NAC intended to convey concerns to the agency regarding risks that would make the TVA procurement other than "typical," it does not appear that NAC's argument that non-incumbents will require a minimum of 22 to 30 months (comprised of the 6- to 12-month COC validation process, followed by the 16- to 20-month transfer cask fabrication) can be reconciled with NAC's earlier estimate of a typical [deleted]-month delivery timeline.⁹

As for the dry storage casks themselves, NAC also argues that the world market for steel is volatile and that the agency should have known that a non-incumbent contractor would not be able to meet the schedule of initial deliveries because of the long lead-times required to obtain supplies. The agency contends that this issue was not raised during exchanges with potential offerors, and that, in addition, NAC's own presentation to the agency suggested that there would not be such supply problems. See AR, Tab 46, NAC Presentation, at 27 (indicating that NAC's "[deleted].")

With regard to both of these fabrication lead-time issues, the protester does not demonstrate that the solicitation schedule is impossible for a non-incumbent to meet or that the agency had reason to doubt that it would receive two or more acceptable proposals. On this record, we find no basis to sustain the protest.

2. Exchanges with Offerors

Next, NAC argues that the TVA's exchanges with prospective offerors did not provide the agency a reasonable expectation that it would receive at least two acceptable proposals. As discussed above, the agency received presentations from NAC, Holtec, and [deleted]. The protester contends that the agency should not have expected acceptable proposals from either NAC or [deleted] in light of: (1) obstacles for non-incumbents in meeting the schedule of initial deliveries, and (2) the absence of clear indications from NAC or [deleted] that either company could meet the schedule.

⁹ The only specific change in the materials market that NAC cites that would affect the fabrication time for a transfer cask is what the protester contends is a relatively recent increase of 6 to 12 weeks in the lead-time required for steel. Protester Comments on the AR at 14. This change alone does not appear to account for the discrepancy between NAC's estimates for the time required to meet the schedule.

The first argument is addressed by our discussion above, in which we conclude that the protester has not demonstrated that the RFP inevitably precludes non-incumbent offerors from competing. As to the second argument, the record supports the agency's conclusion that [deleted] would submit an acceptable proposal. In this regard, [deleted]'s presentation to the agency in October 2006 did not express any reservations or concerns regarding the schedule of initial deliveries. To the contrary, the company stated that it had accomplished the establishment of a new ISFSI (which, as discussed above, the agency viewed as a more difficult undertaking) in 18 months. AR, Tab 44, [deleted] Presentation, at 13. Additionally, [deleted] stated that its proposed solution would allow the TVA to achieve the transition to a new cask without changes to the ISFSI's existing design. *Id.* at 39-43. On this record, we think that the agency had a reasonable expectation that [deleted] would submit an acceptable proposal. In light of the apparent willingness of both Holtec and [deleted] to submit proposals based on the proposed schedule, we conclude that the agency had a reasonable basis to conclude that it would obtain "adequate competition."¹⁰

B. Alternative Proposals

NAC next argues that the solicitation's provisions for submitting an alternative cask model are too restrictive because offerors must have a COC for such models by January 2008. The protester contends that this date is arbitrary and will impede the TVA's ability to get the best value for its requirements.

The TVA states that the request for alternative proposals was intended to allow offerors to submit newer technological solutions for which COCs had not already been granted, but also ensure that the agency could still meet its requirements for delivery. CO Statement at 5. The agency argues that any delay longer than this date would threaten the COC validation process and the schedule of initial deliveries as a whole, because the agency could not proceed with its required review without knowing whether the contractor's COC would be approved. *Id.* The protester's disagreement with the agency's judgment here provides no basis to sustain the protest. USA Fabrics, Inc., supra.

C. Duration of the Contract

Finally, NAC contends that the duration of the anticipated contract is unreasonably long. The solicitation anticipates award of an initial contract with a 5-year term, with an option for the agency to extend the contract an additional 5 years. The protester argues that the duration selected by the agency will lock the agency into a long-term contract that will impede the agency's ability to benefit from future innovation. The

¹⁰ In light of our conclusion here, we need not address whether the agency had a reasonable expectation of receiving a proposal from NAC.

TVA explains that it chose this term based on a balancing of interests. The agency states that a longer contract term allows non-incumbents to be more competitive because the costs would be lower on a per-unit basis over the course of a longer contract. CO Statement at 4. On the other hand, a longer contract term could interfere with the agency's ability to adopt newer technologies by locking the agency into a long-term contract. Id. Again, the protester's disagreement with the agency's judgment here provides no basis to sustain the protest. USA Fabrics, Inc., supra.

The protest is denied.

Gary L. Kepplinger
General Counsel