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## Decision

**Matter of:** eAlliant, LLC  
**File:** B-407332.4; B-407332.7  
**Date:** December 23, 2014

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Clea B. Efthimiadis, Esq., and D. Randall Kemplin, Esq., Department of the Navy, and John W. Klein, Esq., and Laura Foster, Esq., Small Business Administration, for the agencies.  
Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that the procuring agency improperly awarded a short-term sole-source bridge contract is denied where the record shows that the agency had a reasonable basis for its decision to restrict the procurement to the only source it viewed as able to meet the agency's requirement to ensure uninterrupted services.

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### DECISION

eAlliant, LLC, of San Diego, California, protests the award of a sole-source bridge contract (No. N65236-15-C-1003), for a period of 1 month, followed by up to five 1-month options, to Systems Integration and Management, Inc. (SIM), of Arlington, Virginia, by the Department of the Navy, Space and Naval Warfare Systems Center, Atlantic, for service desk operations support at its New Orleans, Louisiana office. eAlliant argues that the sole-source award of this bridge contract was improper.

We deny the protest.

### BACKGROUND

The Navy currently fulfills its requirement for service desk operations through a contract for business operations administrative support services (BOASS) at its

New Orleans office. See Agency Report (AR) at 5. Under this contract, the agency supports the Department of the Navy's personnel and pay systems and its Program Executive Office Enterprise Information System programs such as Navy Future Pay and Personnel, Navy Single Integrated Personnel and New Order Writing. Id. Also under the BOASS contract, the agency provides support for other government agencies, including: Commander, Naval Reserve Force; Navy Recruiting Command; Navy Personnel Command; Department of Homeland Security; and Veterans Administration. Id. SIM is the incumbent contractor who has been performing these services under a Small Business Administration (SBA) 8(a) contract.<sup>1</sup> The incumbent contract was due to expire on September 30, 2014.

The Navy began the acquisition process for the follow-on contract in October 2011. On December 9, 2011, the Navy issued request for proposals (RFP) No. N65236-11-R-0014, as an 8(a) set-aside, for an indefinite-delivery, indefinite-quantity, cost-plus-fixed-fee contract, with a base period of 1 year, and two 1-year options. The services sought included: help desk support; telephony; computer operations support; systems administration support; information security and administration; and network security functions. See AR, CO's Statement, at 5. Following the receipt of proposals, award was made to eAlliant on September 7, 2012.

TRESCOS Joint Venture, which was an offeror and whose team included SIM,<sup>2</sup> filed a protest in our Office on September 14 challenging the award. The agency advised our Office that it would take corrective action, and we dismissed the protest. The Navy again made award to eAlliant on January 25, 2013. On January 29, TRESCOS filed a protest in our Office challenging this second award. On March 15, the Navy decided to take corrective action, and our Office subsequently dismissed the protest.

The Navy issued an amendment to the RFP on May 17, 2013, conducted discussions, and on June 17 received revised technical and cost proposals. On July 29, 2014, the agency again made award to eAlliant. Based on information the agency identified during debriefings, the agency concluded that corrective action was required to address concerns regarding the cost realism evaluation. AR at 6. On August 1, TRESCOS filed another protest with our Office (B-407332.3). Also on

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<sup>1</sup> The SBA 8(a) business development program is designed to enhance the development of small disadvantaged businesses. See 15 U.S.C. § 637(a). Federal agencies offer requirements to the SBA for award through the 8(a) program and the SBA accepts those requirements that eligible 8(a) participants can perform. See 13 C.F.R. §§ 124.502, 124.503. Because the protest presented issues concerning the operation of the 8(a) program, our Office solicited the views of the SBA.

<sup>2</sup> SIM no longer is eligible to be an 8(a) contractor. AR at 7.

August 1, the agency took corrective action by terminating eAlliant's award. Our Office subsequently dismissed TRESKOS's protest.

Following the termination of the award to eAlliant, the Navy decided it would reevaluate offerors' technical and cost proposals. Based on the projected award date for the contract of October 3, and the need for adequate time to transition to the new contractor, the agency concluded that an unacceptable break in service could not be avoided without awarding a bridge contract to ensure continuity of the critical services. See AR, exh. 7, Decl. of Contracting Office Chief (Oct. 10, 2014), at 3-4.

To avoid an interruption in service, the Navy asked the SBA on August 8 to conduct market research to identify potential 8(a) firms interested in its interim requirement. The agency's rationale for pursuing a sole-source contract through the 8(a) program was, in part, based on the agency's desire to "maintain the integrity of the on-going competition." See AR, exh. 7, Decl. of Contracting Office Chief (Oct. 10, 2014) at 4-5. In this regard, the agency concluded that it would be "inappropriate to select one of the existing competitors" and that "selecting one of the ten remaining offerors to perform the interim services was not considered an appropriate option in order to maintain the integrity of the procurement process." Id.

On August 13, the SBA referred an 8(a) contractor, CT70005, LLC, for consideration; the Navy found this contractor unsuitable due to a lack of experience, qualified personnel, and corporate standing. Id. at 5. At that time, the agency determined that it did not have the time to qualify a firm whose performance capability was in doubt. Id. at 5-6. Based on the limited time remaining prior to the expiration of the incumbent contract, the agency concluded that SIM was the only viable source capable of maintaining continuity of services, given its experience and large qualified workforce. See id. at 7.

On September 10, 2014, the Navy executed a justification and approval (J&A) document for other than full and open competition under the authority granted in 10 U.S.C. § 2304(c)(2) based on unusual and compelling urgency. The Navy's J&A approved the sole-source award of a 1-month bridge contract, with five 1-month options, to SIM for the following reasons: (1) SIM currently is performing the same work under the incumbent contract; (2) the incumbent contract was due to expire on September 30, 2014; (3) several rounds of protests and corrective actions had delayed the award of the follow-on contract causing difficult acquisition planning; (4) a transition period would be required for any contractor who would be awarded the follow-on contract; (5) SIM possessed the required workforce in place in New Orleans capable of meeting the requirement without a transition; and (5) an interruption in service was unacceptable due to the critical nature of the agency's functions being supported by the services. AR, exh. 5, J&A, at 1-2. The J&A further stated that any interruption in service desk support would adversely affect the Navy's missions, including Fleet/Marine Corps readiness and operational

availability, and would adversely impact several governmental systems at the individual, unit, command, and headquarters level. Id.

eAlliant became aware of the agency's intended sole-source award of a bridge contract to SIM on September 11, and filed this protest on September 15, challenging the agency's failure to permit the protester to compete for the bridge contract. The on-going contract effort--which begins upon the competition of the bridge contract here--was awarded to CoSolutions EIS JV on September 29. Three offerors, including eAlliant, protested that award; as of the date of this decision, these protests are pending (B-407332.5, B-407332.6, B-407332.8, B-407332.9, B-407332.10). On October 1, 2014, the agency awarded the sole-source bridge contract to SIM with a 1-month base period and five 1-month options.<sup>3</sup>

## DISCUSSION

eAlliant contends that the sole-source award of a bridge contract to SIM was improper for the following reasons: (1) the J&A improperly excluded eAlliant from consideration for the bridge contract; (2) the need for a sole-source contract was caused by the agency's lack of advance planning; and (3) because the incumbent contract was awarded under the 8(a) program, the bridge contract was required to remain in the program--meaning that SIM could not receive this award because it is no longer an eligible 8(a) contractor.<sup>4</sup> For the reasons discussed below, we find no basis to sustain the protest.

The Competition in Contracting Act (CICA) permits an agency to use other than competitive procedures in acquiring goods or services where the agency's requirement is of such an unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits proposals. See 10 U.S.C. § 2304(c)(2); Federal Acquisition Regulation (FAR) § 6.302-2. CICA requires that agencies solicit offers from as many potential sources as is practicable when using the unusual and compelling urgency exception to limit competition. 10 U.S.C. § 2304(e); FAR § 6.302-2(c)(2). As our Office has held, an agency nonetheless may limit a procurement to the only firm it reasonably believes can properly perform the work in the time available. Camden Shipping Corp., B-406171, B-406323, Feb. 27, 2012,

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<sup>3</sup> The agency decided to proceed with award of the bridge contract, notwithstanding eAlliant's protest, due to urgent and compelling circumstances associated with an interruption in these services. AR at 2.

<sup>4</sup> eAlliant raised other collateral arguments. Although we do not address all of the arguments, we have reviewed each one and find that none provides a basis to sustain the protest.

2012 CPD ¶ 76 at 6; McGregor Mfg. Corp., B-285341, Aug. 18, 2000, 2000 CPD ¶ 151 at 6.

When using noncompetitive procedures pursuant to 10 U.S.C. § 2304(c)(2), such as here, agencies are required to execute a written J&A with sufficient facts and rationale to support the use of the cited authority. 10 U.S.C. §§ 2304(f)(1)(A), (B); FAR §§ 6.302-2(c)(1), (d)(3), 6.303, 6.304. Noncompetitive procedures may not properly be used where the agency created the urgent need through a lack of advance planning. 10 U.S.C. § 2304(f)(4)(A); FAR § 6.301(c)(1); Worldwide Language Resources, Inc.; SOS Int'l Ltd., B-296984 et al., Nov. 14, 2005, 2005 CPD ¶ 206 at 12. While an agency may not justify a noncompetitive award on the basis of urgency where the agency's requirements have become urgent as a result of a lack of advance planning, such planning need not be entirely error-free or successful. Pegasus Global Strategic Solutions, LLC, B-400422.3, Mar. 24, 2009, 2009 CPD ¶ 73 at 9; Sprint Commc'ns Co., L.P., B-262003.2, Jan. 25, 1996, 96-1 CPD ¶ 24 at 8-9. Our review of an agency's decision to conduct a noncompetitive procurement focuses on the adequacy of the rationale and conclusions set forth in the J&A; where the J&A sets forth a reasonable justification for the agency's actions, we will not object to the award. Research Analysis & Maint., Inc., B-296206, B-296206.2, July 12, 2005, 2005 CPD ¶ 182 at 4; Global Solutions Network, Inc., B-290107, June 11, 2002, 2002 CPD ¶ 98 at 6.

#### Failure to Solicit Other Sources

First, eAlliant argues that the Navy failed to solicit offers from as many potential sources as practicable in awarding this short-term sole-source bridge contract. We conclude that the agency reasonably found that SIM was the only firm capable of meeting the agency's requirements within the available time.

As discussed above, the Navy attempted to award the contract for the on-going effort to eAlliant on July 31, 2014. The agency took corrective action on August 1, based on information identified during the debriefing of the unsuccessful offerors. The agency then concluded that there would not be enough time to complete the corrective action, make a new award, and transition to a new contractor by the September 30 expiration date for SIM's incumbent contract. AR at 7. For this reason, the agency decided to issue a short-term bridge contract to ensure that the critical services were not interrupted. Id.

As also discussed above, the Navy first attempted to award a short-term bridge contract through the SBA's 8(a) program. The agency requested assistance from the SBA to enter into a 4-month sole-source contract. Id. at 7. The Navy states that, by August 21, it determined that the firm identified by the SBA would not meet the agency's needs for the bridge contract, and also that there was not sufficient time to pursue the possibility of identifying other potential 8(a) firms. Id. at 7-8. The agency subsequently concluded that, based on the time remaining, only SIM could

meet the agency's needs, and issued a J&A for a sole-source bridge contract to SIM for a period of 1-month, followed by up to five 1-month options. Id. at 8-9.

To the extent eAlliant argues that the Navy failed to meet its obligation to solicit offers from as many potential sources as practicable in seeking to enter into a sole-source 8(a) bridge contract with CT70005, LLC, we find that there was no obligation for the agency to do so. The section 8(a) program has both competitive and noncompetitive components, depending on the dollar value of the requirement. See 13 C.F.R. § 124.506(a); United Enter. & Assoc., B-295742, Apr. 4, 2005, 2005 CPD ¶ 67 at 3. Generally, where the acquisition value exceeds \$4 million, a section 8(a) contract must be competed among section 8(a) firms; section 8(a) acquisitions with values less than \$4 million, such as the one initially sought by the Navy for the bridge contract, may be awarded on a noncompetitive basis. See United Enter. & Assoc., supra. Because of the broad discretion afforded a contracting officer to award a noncompetitive contract under section 8(a) of the Small Business Act, our review of actions related to noncompetitive acquisitions under the 8(a) program is generally limited to determining whether government officials have violated regulations or engaged in fraud or bad faith. DLS Servs., Inc., B-276960, May 20, 1997, 97-1 CPD ¶ 191 at 2; see Bid Protest Regulations, 4 C.F.R. § 21.5(b)(3).

Here, the Navy's proposed sole-source 8(a) bridge contract to CT70005, LLC, was valued at less than \$4 million. We therefore see no merit in eAlliant's argument that the Navy's attempt to enter into a sole-source 8(a) contract was improper, given the authority of agencies to do so on a noncompetitive basis. In any event, the protester conflates the process for award of a sole-source 8(a) contract and the requirements for awarding a sole-source contract under CICA's urgent and compelling exception to full and open competition. Whereas 10 U.S.C. § 2304(3) and FAR § 6.302-2(c)(2) require agencies to solicit offers from as many potential sources as is practicable, the 8(a) sole-source provisions of 13 C.F.R. § 124.506(a) and FAR subpart 19.8 do not have such a requirement.<sup>5</sup>

Next, to the extent eAlliant argues that after the Navy abandoned its attempt to award a bridge contract to an 8(a) firm on a noncompetitive basis, the agency failed to meet its obligation to solicit offers from as many potential sources as is practicable in awarding the 1-month sole-source bridge contract to SIM, we disagree. As discussed above, while an agency must solicit as many offerors as practicable when seeking to award a sole-source contract under the urgent and

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<sup>5</sup> Moreover, eAlliant's argument that the Navy acted improperly in attempting to enter into a noncompetitive bridge contract with an 8(a) company is academic at this point. At best, eAlliant's argument is but a building block towards a larger goal--i.e., that our Office will view the Navy's failed attempt to identify an 8(a) contractor to perform these services on a short-term basis as evidence of a lack of advance planning. As discussed herein, we do not find merit in such an argument.

compelling exception to full and open competition, the agency may limit a procurement to the only firm it reasonably believes can properly perform the work in the time available. Camden Shipping Corp., supra, McGregor Mfg. Corp., supra.

Here, the Navy concluded by August 22, 2014, that its needs for the bridge contract could not be met through the 8(a) program within the timeframe needed to avoid a disruption in services. AR at 8, 15. The agency therefore concluded that it needed to execute a 1-month sole-source bridge contract under the urgent and compelling exception to full and open competition. Id. The agency executed a J&A which stated that SIM was the only firm capable of meeting the agency's need to ensure continuity of service after the expiration of the incumbent contract on September 30. AR, exh. 5, J&A, at 1-2.

eAlliant does not dispute the agency's statement that eAlliant, or any other contractor other than SIM, would need a 3-week transition to perform these services. See Comments at 11. Assuming, as the agency states, that the transition to a new contractor would require up to three weeks, and the agency's abandoned pursuit of a sole-source 8(a) contract on August 21, the record shows that the agency would have had approximately two and a half weeks to issue a solicitation for the bridge contract, receive and evaluate proposals, and make an award. Although the protester argues, generally, that there was enough time to accomplish these tasks, we do not think that the protester demonstrates that the agency unreasonably concluded that there was not enough time to conduct a competition, and ensure a timely transition that would avoid an interruption of services. On this record, we find that the Navy reasonably concluded that SIM was the only firm that could meet the agency's requirement to ensure uninterrupted services.

#### Lack of Advance Planning

Next, eAlliant argues that the Navy's need to award a 1-month sole-source bridge contract on an urgent and compelling basis was the result of the agency's failure to conduct adequate advance planning, as required under 10 U.S.C. § 2304(f)(4)(A) and FAR § 6.301(c)(1). The protester argues that the agency's unreasonable actions prior to the July 29, 2014, award, as well as its corrective action following the protest of that award, were the cause of the urgent and compelling circumstances cited in the J&A. We find no merit to this contention.

In this regard, eAlliant argues that the Navy improperly delayed making an award for its underlying requirement until July 2014. As discussed above, however, the record reflects that the agency began its acquisition for the follow-on requirement in December 2011, more than 2 years prior to the expiration of the incumbent contract on September 30, 2014. The agency made awards on September 7, 2012, and January 25, 2013, each of which was followed by protests and corrective action.

The Navy again attempted to award the on-going contract for these services on July 29, 2014, which left two months for transition--which, the agency stated, was "more than sufficient time" for transition. AR at 11. The Navy contends that the urgency that justified the award of the disputed bridge contract to SIM arose from the protest that followed the award to eAlliant on July 29, 2014, rather than the history of the procurement prior to that award. We agree with the agency. As our Office has held, an immediate need for services that arises as a result of an agency's implementation of corrective action in response to a protest does not constitute a lack of advance planning. See Systems Integration & Mgmt., Inc., B-402785.2, Aug. 10, 2010, 2010 CPD ¶ 207 at 3; Chapman Law Firm Co., LPA, B-296847, Sept. 28, 2005, 2005 CPD ¶ 175 at 3.

Next, eAlliant argues that the Navy could have conducted a competition for the bridge contract following its corrective action on August 1, and the failure to do so demonstrates a lack of advance planning. In this regard, the protester cites the agency's acknowledgement that there was "more than sufficient time" for transition to a new contractor at the time of the July 29, 2014, award. AR at 11. eAlliant contends, therefore, that the agency should have also had enough time to conduct both the transition as well as a competition for the bridge contract. We disagree with the protester.

The Navy first attempted to bridge its needs with a short-term sole-source 8(a) award. As also discussed above, the agency's decision to pursue a sole-source 8(a) contract was a matter within the agency's discretion. Although this attempt was not successful, our Office has recognized that such efforts do not need to be error-free, nor do they need to be successful. See Pegasus Global Strategic Solutions, LLC, supra; Sprint Commc'ns Co., L.P., supra. In light of the agency's unsuccessful attempt to enter into an 8(a) contract, and the time lost to that effort, we think the agency reasonably concluded that a noncompetitive 1-month sole-source bridge contract was required. Additionally, as discussed above, we find that the agency reasonably concluded that there was not enough time, following the abandonment of the 8(a) contract approach, to conduct a competition and ensure adequate time for a transition to a new contractor. On this record, we find no basis to sustain the protest.

#### Removal of Requirement from the 8(a) Program

Finally, eAlliant argues that the bridge contract was required to be awarded under the 8(a) program. For this reason, the protester argues that the Navy improperly awarded the contract to SIM, which is no longer an eligible 8(a) firm. We find no merit to this argument.

Under SBA regulations, where a procurement is awarded as an 8(a) contract, its follow-on or renewable acquisition must remain in the 8(a) program unless SBA agrees to release it for non-8(a) competition. See 13 C.F.R. § 124.504(d)(1). The



requirement to remain in the program, however, does not apply where a follow-on contract is a “new requirement,” which includes, as relevant here, the following: “The expansion or modification of an existing requirement will be considered a new requirement where the magnitude of change is significant enough to cause a price adjustment of at least 25 percent (adjusted for inflation) or to require significant additional or different types of capabilities or work.” Id. § 124.504(c)(1)(ii)(C).

The record here reflects that the sole-source contract awarded to SIM is a new requirement that is not a follow-on contract that must be awarded through the 8(a) program. In this regard, the sole-source contract has a significantly shorter performance period and lower contract value (approximately \$7 million for up to 6 months) than the incumbent contract or the anticipated follow-on contract (approximately \$67 million for up to 3 years). In response to a request from our Office to the SBA to comment on this matter, the SBA advised that it views the requirement being fulfilled through the sole-source bridge contract as a new requirement. See SBA Comments (Oct. 29, 2014) at 3. For this reason, the SBA explains, the requirement for follow-on contracts to stay in the 8(a) program does not apply. See id. We agree with the SBA’s analysis, and therefore find no merit to the protester’s challenge to the award of the bridge contract to SIM.

The protest is denied.

Susan A. Poling  
General Counsel