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## Decision

**Matter of:** Vertex Aerospace, LLC

**File:** B-418828.8

**Date:** July 23, 2021

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J. Alex Ward, Esq., W. Jay DeVecchio, Esq., James A. Tucker, Esq., Alissandra D. Young, Esq., and Lyle F. Hedgecock, Esq., Morrison & Foerster LLP, for the protester. Anuj Vohra, Esq., Christian N. Curran, Esq., and William B. O'Reilly, Esq., Crowell & Moring LLP, for PAE Aviation and Technical Services LLC, the intervenor. Jason B. Nelson, Esq., Thomas J. Florip, Esq., and Christopher Erly, Esq., Department of the Navy, for the agency. Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging cancellation of solicitation is denied where the agency reasonably determined that a change in requirements exceeded what offerors were likely to have anticipated when the solicitation was originally issued.
  2. Protest challenging the placement of an interim sole-source contract is denied where the agency reasonably determined that only one offeror could provide the highly specialized services in question without causing an unacceptable delay.
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### DECISION

Vertex Aerospace, LLC, of Madison, Mississippi, protests the cancellation of fair opportunity submission request (FOSR) No. N00421-20-TO-0001, issued by the Department of the Navy for contractor logistics support, including organizational, select intermediate, and limited depot level maintenance and logistics support services for F-5N/F and F-16A/B Adversary Program aircraft. In addition, Vertex protests the Navy's decision to award an interim sole-source contract to PAE Aviation and Technical Services, LLC, of Arlington, Virginia, for contractor logistics support for F-5 N/F aircraft. Vertex argues that the cancellation of the solicitation was unreasonable and the sole-source award to PAE was improper.<sup>1</sup>

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<sup>1</sup> The Navy requested that our Office decide this protest using the express option time periods available under our Bid Protest Regulations, 4 C.F.R. § 21.10. In light of the

We deny the protest.

## BACKGROUND

On December 20, 2019, the Navy issued the FOSR against its Contracted Maintenance, Modification, Aircrew and Related Services (CMMARS) multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contract to procure maintenance and logistics support services for F-5N/F and F-16A/B aircraft. Agency Report (AR), Tab 1, Conformed FOSR at 1. The requirement was previously met using two separate contracts: Contract No. N00019-15-D-0001 for F-16A/B support with DynCorp International, Inc. and Contract No. N00421-15-D-0007 for F-5N/F support with PAE.

In response to the FOSR, the agency received six proposals, including proposals from Vertex and PAE. On May 29, 2020, the agency issued a task order to Vertex at the evaluated price of \$534,872,306. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 4. On June 15, our Office received protests of the award from DynCorp and PAE, which we docketed as B-418828.1 and B-418828.2 respectively. After the agency announced it would take corrective action by reevaluating proposals, our Office dismissed the protests as academic.

On November 13, after completing this reevaluation, the agency again issued the task order to Vertex. On December 7, our Office received protests of the award from PAE and AECOM Management Services, Inc., which our Office docketed as B-418828.3 and B-418828.4 respectively. On March 17, 2021, our Office denied PAE's protest but sustained AECOM's protest, finding that the agency held unequal exchanges with offerors. See *AECOM Mgmt Services, Inc.*, B-418828.4 *et al.*, Mar. 17, 2021, 2021 CPD ¶ 152 at 13. We recommended that the agency reopen exchanges with AECOM and provide AECOM an opportunity to revise its proposal. *Id.*

During the course of the procurement, and immediately after our Office's decision sustaining AECOM's protest, the Navy advises that its requirements changed. For example, on January 8, 2021, Navy leadership decided that VFC-13 (a reserve adversary squadron located at Fallon, Nevada, operating F-5N/F aircraft) would receive 12 F-16C aircraft, displacing 12 of its F-5N/F aircraft to VFA-204 (a reserve squadron operating F/A-18C aircraft at New Orleans, Louisiana) to replace the retiring F/A-18C aircraft assigned to that squadron. COS/MOL at 5. On April 30, the agency secured funding for an additional 26 F-16C/D aircraft, funding that the agency had earlier sought. *Id.* On May 6, the United States Marine Corps finalized a requirement for an additional F-5N/F site location in Beaufort, South Carolina. *Id.*

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imminent expiration of the incumbent F-5N/F contract on July 31, 2021, and our ability to meet the shortened timeline in this case, we granted the request.

Based on these changed requirements, the Navy decided to cancel the FOSR. On May 7, the Navy's procuring contracting officer approved the cancellation, citing the requirements of Federal Acquisition Regulation (FAR) section 15.206(e),<sup>2</sup> the agency's change in requirements, and the agency's expectation that the cancellation would lead to an increase in competition. AR, Tab 2, Cancellation Memo. at 000949. On May 10, the agency posted a cancellation notice to the Navy's competition library. AR, Tab 3, Cancellation Notice at 000951. On May 17, the agency issued a notice of termination to Vertex for the task order. COS/MOL at 6.

Following the notice of cancellation, the agency posted, on the beta.SAM.gov website, a notice of its intent to issue two separate solicitations to support the Navy's Adversary aircraft program requirements, anticipating the award of one contract for the F-5 requirements and one contract for the F-16 requirements. AR, Tab 6, Industry Day Announcement at 000958-962.

On May 11, the Navy posted a synopsis notifying offerors of its intent to award an interim sole-source, IDIQ contract to PAE for continued contractual coverage for an 18-month ordering period. COS/MOL at 6. With respect to the interim contract, the synopsis advised contractors that the agency intended to use the "statutory authority of 10 U.S.C. 2304(c)(1), as implemented by [FAR] 6.302-1, only one responsible source and no other supplies or services will satisfy agency requirements." AR, Tab 4, Sole-Source Synopsis at 000953-954. The interim contract would only cover maintenance and logistics support services for F-5N/F aircraft. AR, Tab 11, Draft Justification & Approval (J&A) at 000983. The contract would provide continuing services in light of the expiration of PAE's incumbent contract on July 31, 2021; would contain fixed-price and cost-reimbursement line items; and would have an estimated value of \$99,236,914. *Id.*

The draft J&A for the contract, prepared within the agency but not included in the May 11 synopsis, cited 10 U.S.C. § 2304(c)(1), as implemented by FAR section 6.302-1 (Only One Responsible Source), to justify the use of noncompetitive procedures.<sup>3</sup> *Id.* at 000984. Specifically, the agency stated that FAR section 6.302-1(a)(2)(iii)(B) permits the use of other than full and open competition when award to any other source would

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<sup>2</sup> Section 15.206(e) of the FAR provides, "[i]f, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition."

<sup>3</sup> The agency has not yet completed a final J&A. The protester states that to "accommodate the [a]gency's interest in an expedited resolution of the protest, Vertex is content to proceed on the basis of the draft J&A's articulated rationale for the sole-source award." Comments at 3.

result in “unacceptable delays in fulfilling the agency’s requirements.” *Id.* The draft J&A provided that while multiple vendors were capable of performing the requirement, only PAE could do so without creating an “unacceptable break in service.” *Id.* at 00986. The agency stated that a break in service “would severely disable the Navy and Marine Corps’ ability to maintain and continue to use F-5N/F aircraft to train pilots in aerial combat and verify that pilots are prepared to deploy.” *Id.*

The draft J&A also assessed a capability statement submitted by Vertex but concluded that awarding an interim services contract to Vertex would create an “unacceptable delay” due to a break in service since Vertex would require a [DELETED]-day transition-in period. *Id.* at 000987.

On May 20, Vertex filed this protest of the agency’s decision to cancel the FOSR<sup>4</sup> and issue an interim sole-source contract to PAE.

## DISCUSSION

The protester argues that both the agency’s cancellation of the FOSR and its subsequent decision to award a sole-source contract to PAE were improper. With respect to the cancellation, Vertex argues that the agency’s rationale was unreasonable because the agency cited FAR section 15.206(e) as its justification for the cancellation, when the FAR section did not require such a cancellation. In addition, the protester asserts that the agency cancelled the solicitation without considering the costs incurred by either the agency or the offerors competing for the requirement, or the impact of the cancellation on the agency’s ability to meet its requirements. Vertex also challenges the sole-source award, arguing that the justification for the award did not comply with regulatory requirements and was unreasonable.

While we do not address every argument raised by the protester, we have reviewed each argument and find no basis to sustain the protest.

### Cancellation

The protester argues that the cancellation of the FOSR was flawed because it was based on the incorrect conclusion that FAR section 15.206(e) required such a cancellation. Section 15.206(e) of the FAR requires an agency to cancel a solicitation if:

in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would

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<sup>4</sup> Because the value of the cancelled task order exceeds \$25 million, the protest of the cancelled solicitation is within our Office’s jurisdiction to review protests of task orders issued under multiple-award contracts awarded by defense agencies. 10 U.S.C. § 2304c(e)(1)(B).

have submitted offers had the substance of the amendment been known to them[.]

The agency's cancellation memorandum cited FAR section 15.206(e) as the basis for the cancellation and noted that "there have been multiple significant changes in the requirements." AR, Tab 2, Cancellation Memo. at 000949. These changes included the addition of 22 new F-5N/F aircraft, 26 new F-16A/B aircraft, and two new service locations.<sup>5</sup> *Id.* at 000948-949. The agency stated that since it "could not have reasonably anticipated these substantial changes, it is reasonable to also assume that prospective offerors could not have reasonably anticipated the changes." *Id.* at 000949. The Navy further noted that cancelling the FOSR would allow the agency to break the requirement into two standalone IDIQ contracts (one for F-5N/F services and one for F-16A/B services), and that these changes will result in an "increase to competition and overall better pricing due to the impact to the competitive field." *Id.*

The protester argues that the changes did not exceed what offerors anticipated because the solicitation's performance work statement (PWS) advised offerors that the agency was planning on procuring an additional 22 F-5N/F aircraft during the course of contract performance. See AR, Tab 1, PWS at 000095. In addition, Vertex asserts that the agency's expectation that the cancellation would result in more competition is unreasonable and unsupported in the record. In this respect, the protester argues that the modified requirement has become "more complex, not easier to perform." Comments at 11. Finally, the protester contends that the agency unreasonably failed to consider the impact of the cancellation on the agency's ability to meet its requirements.

It is well established that in a negotiated procurement, a contracting agency has broad discretion in deciding whether to cancel a solicitation, and need only establish a reasonable basis for doing so. *SupplyCore Inc.*, B-411015.8, May 27, 2016, 2016 CPD ¶ 153 at 3. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. *American Sys. Corp.*, B-412501.2, B-412401.3, Mar. 18, 2016, 2016 CPD ¶ 91 at 6.

Here, we find the agency's decision to cancel the solicitation reasonable in light of significant changes to the agency's requirements. In this regard, the FOSR solicited services for 57 aircraft at 3 locations, but the agency's requirement subsequently changed to include services for 105 aircraft at 5 locations. In addition, the agency decided to issue the requirement as two standalone IDIQ contracts, rather than as one task order under a governmentwide acquisition contract (GWAC). While the protester is correct that the PWS noted the agency's plan to add 22 additional F-5N/F aircraft, the PWS did not mention the other 26 aircraft being added or the two additional locations. In addition, the PWS stated that the plan was being provided for informational purposes only and instructed offerors not to include the aircraft in their minimum manning. AR, Tab 1, PWS at 000095. In short, and notwithstanding the PWS note, we find that the

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<sup>5</sup> The original solicitation sought services for 43 F-5N/F aircraft and 14 F-16A/B aircraft at three locations. COS/MOL at 9, 10 n.3.

agency reasonably concluded that the changed requirements exceeded what offerors could have reasonably anticipated when they first responded to the FOSR.

In addition, we find that the agency reasonably concluded that competing the changed requirements would increase the level of competition. In this respect, the agency's plan to divide the requirements into two standalone IDIQ contracts, while increasing the relevant number of aircraft for each contract, would increase the dollar value while also removing the obstacle of offerors having to be holders of the CMMARS GWAC. While the protester argues that this would create a more complex requirement or would decrease the overall level of competition, it has largely failed to provide support for this assertion. Indeed, as the agency notes, the Navy has already received interest in the new requirements from 40 different offerors at an industry day presentation.

Finally, we are not persuaded by the protester's assertion that the cancellation was unreasonable due to the Navy's failure to consider the impact of the cancellation on the agency's ability to meet its requirements in the interim period. In this respect, the cancellation memorandum noted that the FOSR "no longer satisf[ies] the Government's needs and will not satisfy the Government's needs without significant revisions." AR, Tab 2, Cancellation Memo. at 000949. In light of this conclusion that the solicited task order would not meet the Navy's needs, we are not persuaded that the agency acted improperly in canceling the solicitation. We note further that the Navy's contract with PAE for F-5N/F aircraft expires on July 31, 2021, a date the agency contends would not have provided it with sufficient time to complete the corrective action recommended by GAO in response to a protest decided on March 17. We see no reason to question this assessment.

#### Sole-Source Award

The protester challenges the agency's plan to issue an interim sole-source contract under FAR section 6.302-1(a)(2)(iii), which permits agencies to award a contract without using competitive procedures, under the following circumstances:

. . . services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in . . . (B) Unacceptable delays in fulfilling the agency's requirements.

Vertex contends that the agency's reliance on FAR section 6.302-1(a)(2)(iii)(B) is misplaced because other potential supply sources could have met the requirement without creating "unacceptable delays." In this respect, the protester argues that the agency could have completed the competition conducted under the FOSR, which only would have required limited discussions with one offeror. The protester also argues that the agency could have used FAR section 6.302-2, which permits the use of noncompetitive procedures when there is unusual and compelling urgency. The protester asserts that the agency's failure to consider these other acquisition methods

failed to comply with the requirement at FAR section 6.301(d) for the contracting officer to “solicit offers from as many potential sources as is practicable” when using non-competitive procedures.

Our review of an agency’s decision to conduct a sole-source 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. *Chapman Law Firm Co., LPA*, B-296847, Sept. 28, 2005, 2005 CPD ¶ 175 at 3. A contracting officer may not properly use noncompetitive procedures if the procuring agency created the need to use such procedures through a lack of advance planning. *New Breed Leasing Corp.*, B-274201, B-274202, Nov. 26, 1996, 96-2 CPD ¶ 202 at 6. However, an agency’s procurement planning need not be error-free or successful, and the fact that an agency encounters delays or exigencies does not demonstrate that the agency failed to meet its obligation for advance planning. See *eAlliant, LLC*, B-407332.4, B-407332.7, Dec. 23, 2014, 2015 CPD ¶ 58 at 5.

Here, we find that the agency properly invoked FAR section 6.302-1(a)(2)(iii)(B) to avoid an unacceptable delay. In this respect, the draft J&A explained that only PAE, the incumbent contractor, could perform the F5N/F services without creating a break in services that would “severely disable the Navy[’s] and Marine Corps’ ability to maintain and continue to use F-5N/F aircraft to train pilots in aerial combat and verify that pilots are prepared to deploy.” AR, Tab 11, Draft J&A at 000986. The draft J&A further explained:

As a specific example, any disruption in the provision of F-5 [contractor logistics support] services will significantly degrade pre-deployment training periods that are scheduled for August and September of 2021. These pre-deployment training periods are required to certify that two Carrier Air Wings, each consisting of approximately 70 aircraft, are ready for operational deployments aboard aircraft carriers. Without this training in support of the nation’s critical warfighting capabilities, the Department of Defense (DoD) would not be able to support the National Defense Strategy and the territories of the United States (home and abroad) and its allies, as well as the world’s sea lanes, would be vulnerable to attack.

*Id.* The draft J&A also specifically considered whether an award to Vertex would create such an unacceptable break in service, and concluded that it would. In this respect, the Navy noted that, according to Vertex’s own capability statement, the contractor would require [DELETED] days of transition-in time after contract award to begin performance of the requirement. *Id.* at 000987. The agency noted that these [DELETED] days would come in addition to “the time it would take for the Navy to run a competition to select another vendor such as Vertex instead of availing itself of the authority at FAR 6.302-1(a)(2) (iii)(B) to award a sole-source bridge contract to PAE[.]” *Id.* In light of these delays, and the consequences arising from them, we find that the agency reasonably concluded that an award to a contractor other than PAE would create an unacceptable delay.

Vertex further suggests that the agency's transition concerns are "a problem of its own creation," and argues that the agency should have secured interim services for the requirement "through competition (ideally, under the nearly completed task order competition) or under the unusual and compelling urgency exception, [FAR 6.302-2]."<sup>6</sup> Comments at 9 (*citing VSE Corp.; Johnson Controls World Servs., Inc.* B-290452.3 *et al.*, May 23, 2005, 2005 CPD ¶ 103 at 10). As discussed above, however, we find that the agency has adequately explained that the task order competition for F5N/F aircraft and F-22 services no longer meets its requirements. In addition, the Navy explained that it reasonably expected that the task order could not be issued before PAE's incumbent F-5F/N contract expired. While the protester contends that these issues should be attributed to the Navy's lack of adequate planning, we are not persuaded that such exigencies demonstrate that the agency failed to meet its obligation for advance planning.<sup>7</sup> See *eAlliant, LLC, supra*.

Finally, we dismiss as untimely the protester's argument (first raised in its comments on the agency report) that the agency should have used FAR 6.302-2 (unusual and compelling urgency) as an alternative procurement method for these interim services, potentially resulting in an award of the interim services to Vertex. The protester asserts that the Navy's failure to use this method violated the requirement at FAR section 6.301(d) for the contracting officer to "solicit offers from as many potential sources as is practicable." We find this argument to be untimely, however, because the sole-source synopsis, published by the agency on May 11, apprised contractors that the Navy intended to issue a sole-source contract to PAE "under the statutory authority of 10 U.S.C. § 2304(c)(1), as implemented by [FAR] 6.302-1, only one responsible source and no other supplies or services will satisfy agency requirements." AR, Tab 4, Sole-Source Synopsis at 000953. While the protester discussed and appended the synopsis in its initial protest filing, it did not argue, in that filing, that the agency should have used FAR section 6.302-2 to justify procuring the interim services. Indeed, the protester argued that the sole-source action would "fail under the standards of FAR 6.302-2" because the performance period of the interim contract was longer than a year. Protest at 11 n.5.

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<sup>6</sup> In addition, the protester contends that the agency failed to document how the requirement qualified as involving "highly specialized services," as that term is used in FAR section 6.302-1(a)(2)(iii). We have reviewed this argument but find no reason to question the agency's judgment that the requirement (which involves organizational, intermediate, and limited depot level maintenance and logistics services for F-5N/F Adversary program aircraft) constitutes a highly specialized service.

<sup>7</sup> We note that Vertex's reliance on our decision in *VSE Corp.; Johnson Controls World Servs., Inc. supra*, is misplaced since in that case, unlike here, the agency unreasonably delayed deciding to cancel the solicitation before extending a contract that had been noncompetitively awarded 4 years earlier. Here, by contrast, the agency acted promptly to cancel the solicitation following the change in its requirements.

Our regulations do not permit the piecemeal presentation of protest issues, where, as here, there is no reason the protester could not have earlier raised this contention. *Synergy Solutions, Inc.*, B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 7. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a). The protester contends that the above argument was not a supplemental protest ground (or, in the alternative, was timely raised following the protester's review of the draft J&A, provided in the agency's report answering the protest). We find, however, that the assertion is a new argument that could have been raised in the initial protest filing based on the identification of the regulatory basis justifying the sole-source decision in the synopsis to which Vertex responded. As it was not raised at that time, it is untimely.

The protest is denied.

Thomas H. Armstrong  
General Counsel