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Decision

Matter of: Piedmont Propulsion Systems, LLC

File: B-410914.2

Date: March 17, 2015

Darwin A. Hindman III, Esq., and Joshua Mullen, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, for the protester.

Scott E. Pickens, Esq., Barnes & Thornburg LLP, for Rolls-Royce Corporation, an intervenor.

Thomas J. Florip, Esq., Thomas P. Fort, Esq., Bridget A. Jarvis, Esq., and James B. Travis, Esq. Department of the Navy, for the agency.

Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of a proposed sole-source contract, which the agency justifies on the basis that only one responsible source will satisfy the requirement without unacceptable delay, is denied where the record reasonably supports the agency's justification, and there is no basis to conclude that the use of noncompetitive procedures was caused by the agency's lack of reasonable advance procurement planning.

DECISION

Piedmont Propulsion Systems, LLC, of Winston-Salem, North Carolina, protests the issuance by the Department of the Navy, Naval Air Systems Command (NAVAIR), of a notice of its intent to award a sole-source contract to Rolls-Royce Corporation for performance-based logistics to support the United States Marine Corps' (USMC) KC-130J aircraft propulsion systems. Piedmont challenges the propriety of the proposed sole-source award, arguing that the justification lacks a reasonable basis and reflects a lack of reasonable advanced procurement planning by the agency.

We deny the protest.

BACKGROUND

The KC-130J aircraft is a medium-sized, four-engine, turboprop aircraft utilized by the USMC to support various critical assault missions. The aircraft has been modified to perform various refueling tasks, such as air-to-air refueling, air-delivered ground refueling, offensive air support, and other assault support. The aircraft's propulsion system consists of various parts including, as relevant here, an AE2100D3 turboprop engine and an R391 propeller. Rolls-Royce is the original equipment manufacturer for the engine and GE Dowty is the original equipment manufacturer for the propeller. At this time, neither manufacturer has provided NAVAIR with unrestricted rights to technical data for these components. See Agency Report (AR) at 6-8.

Since 2002, NAVAIR has acquired maintenance services for the KC-130J propulsion system under a sole-source contract with Rolls-Royce; Rolls-Royce, has subcontracted maintenance of the R391 propeller with GE Dowty. Id. at 6. The KC-130J propulsion system requirement includes commercial depot level support; technical publications; program management; configuration management; field service support; technical data management; engine Weapons Replaceable Assembly (WRA) and component repair; supply support; and WRA and component packaging. Id. at 5.

Prior Sole-Source Award and March 2014 Protest

In September 2012, NAVAIR executed a justification and approval (J&A) authorizing issuance of a sole-source contract with Rolls-Royce, based on the authority in the Competition in Contracting Act (CICA), 10 U.S.C. 2304(c)(1), which permits the use of other than full and open competition, where only one responsible source can satisfy an agency's requirements. See AR, Tab 6, J&A, at 1. The J&A anticipated the award of a contract, for a base year and four 1-year options, to provide maintenance of AE2100D3 engines and R391 propellers; procurement of engine spares; and logistics and engineering support. Id. As relevant here, the J&A under "Actions to Remove Barriers to Future Competition," stated that it would not be feasible for another source to "acquire the extensive technical, manufacturing and procurement capabilities necessary to perform this effort." Id. The J&A also stated that the government lacked adequate technical data and technical rights to award a competitive procurement. Id. at 2. The J&A concluded that NAVAIR has no plans for any subsequent competition for the requirements, but that if potential sources emerged, the agency would assess their capabilities and determine the feasibility for competition. Id.

On October 19, NAVAIR also issued a presolicitation notice regarding its intent to enter into sole-source negotiations with GE Dowty for a basic ordering agreement with a 5-year ordering period to procure GE Dowty R391 propeller systems and propeller system parts. AR, Tab 7, Sole-Source Notice (Oct. 19, 2012), at 1.

Piedmont responded to the notice on October 24, and requested that NAVAIR open the agency's propeller requirements to competition.¹ See AR, Tab 8, Piedmont Letter (Oct. 24, 2012), at 1. Piedmont also advised NAVAIR that it had the capability to maintain and repair the R391 propellers. Id. As relevant here, Piedmont argued that the agency could obtain maintenance manuals for the propeller from GE Dowty under the authority of FAA regulations which govern instructions for continued airworthiness (ICA), 14 C.F.R. § 21.50.² Id. at 2. NAVAIR held a conference call to discuss the matter with Piedmont on November 9. Based on the conversation with the protester, the agency determined that Piedmont had a propeller repair facility, but did not have an agreement with GE Dowty to manufacture or sell the propellers or the propeller's parts. AR at 10; Tab 9, Conference Call Minutes, at 1-2. The agency further concluded that Piedmont was requesting that the agency obtain a technical data package from GE Dowty, by exercising the agency's rights under 14 C.F.R. § 21.50, so that Piedmont could obtain the technical data needed to meet the agency's propeller requirements.³ See AR, Tab 9, Conference Call Minutes, at 1-2.

On January 29, 2013, NAVAIR advised Piedmont that the agency would proceed with the procurement as described in the presolicitation notice. AR, Tab 11, NAVAIR Letter (Jan. 9, 2013), at 1. The agency stated that it could not proceed

¹ The correspondence between the parties during this time appears to refer at times to Piedmont's interest in competing for both the provision of the propellers and the maintenance of the propellers.

² Section 21.50(b) states in pertinent part:

The holder of a design approval, including either the type certificate or supplemental type certificate for an aircraft, aircraft engine, or propeller for which application was made after January 28, 1981, must furnish at least one set of complete Instructions for Continued Airworthiness to the owner of each type aircraft, aircraft engine, or propeller upon its delivery, or upon issuance of the first standard airworthiness certificate for the affected aircraft, whichever occurs later. . . . Thereafter, the holder of a design approval must make those instructions available to any other person required by this chapter to comply with any of the terms of those instructions. In addition, changes to the Instructions for Continued Airworthiness shall be made available to any person required by this chapter to comply with any of those instructions.

³ On December 3, Piedmont sent an additional letter to the agency, requesting, among other things, that the agency obtain copies of all ICAs for the R391 propeller system components. AR, Tab 10, Piedmont Letter (Dec. 3, 2012), at 2.

with a competitive procurement for the propeller requirements because GE Dowty was the only source for the requirements. Id. In this regard, the agency stated that it viewed Piedmont as acknowledging that it did not have the technical capability or data needed to provide the required parts sought under the anticipated sole-source award. Id. The agency also stated that the applicable FAA regulations did not give the agency the ability to obtain design and manufacturing data for the R391 propeller, and that the agency did not possess this data. Id. at 1-2. On August 1, NAVAIR executed a J&A authorizing the award of multiple sole-source delivery orders to procure R391 propellers and spare propeller components from GE Dowty. See AR, Tab 14, J&A (Aug., 1, 2013), at 1. The J&A noted that one vendor, Piedmont, responded to the October 2012 synopsis, but could not meet the requirement. Id. at 2.

On October 1, Piedmont wrote to NAVAIR arguing that, although the agency had dismissed the protester's recommendations for promoting competition, the agency could nonetheless use the FAA regulations to obtain the ICA maintenance data. AR, Tab 17, Piedmont Letter (Oct. 1, 2013), at 1. The protester contended that such maintenance data would allow third parties, such as Piedmont, to "learn various technical attributes of the propellers and propeller spare parts that would allow such third parties to reverse engineer, certify, and manufacture the products that NAVAIR seeks." Id.

On February 28, 2014, NAVAIR awarded a sole-source contract to Rolls-Royce for performance based logistics for the KC-130J propulsion system, including propeller repairs, for a base year, and two option years. Piedmont protested the award to our Office on March 10, arguing that the sole-source award and J&A were based on inaccurate information. Piedmont Protest (B-409576, Mar. 10, 2014), at 1. The protester also argued that the contract improperly bundled the engine and propeller requirements. Id. at 3. The protester also continued to maintain that NAVAIR could promote competition by availing itself of the right to distribute ICA for the R391 propeller to third parties under the FAA regulations at 14 C.F.R. § 21.50(b).

On March 24, NAVAIR advised our Office that the agency would take the following corrective action in response to the protest:

The Agency will terminate the subject contract and conduct a review of the technical data necessary to perform the requirement under the contract. In conjunction with this review, the Agency will determine whether it has or is able to obtain necessary technical data to conduct a competition of the requirement in whole or in part. Following this review and determination, the Agency will post a synopsis on FedBizOpps in order to enhance competition and provide small businesses access to acquisition information.

AR, Tab 21, Notice of Corrective Action, at 1. Our Office dismissed the protest (B-409576) as academic on March 25, 2014.

In connection with the proposed corrective action, NAVAIR executed a J&A authorizing the award of a 1-year contract to Rolls-Royce to support the KC-130J propulsion system based on an unusual and compelling urgency. See id., citing 10 U.S.C. § 2304(c)(2). As relevant here, the J&A included the following statement:

NAVAIR is conducting a thorough review of the KC-130J propulsion system technical data package that the Government currently possesses and any additional data that the Government has a right to obtain; including technical data the Government has rights in from previous and current contracts. NAVAIR is also researching technical data available pursuant to FAA regulations, and whether that data is adequate to conduct full and open competition for this requirement in whole or in part. This analysis is expected to be completed within 60-90 days from the date of this J&A.

AR, Tab 20, J&A (Mar. 21, 2014), at 3. NAVAIR awarded the 1-year contract to Rolls-Royce on March 24, which provided for performance until February 28, 2015.

Corrective Action and Exchanges with Piedmont

On April 1, NAVAIR met with Piedmont to address issues raised in its protest, as well as how to maximize competition and reduce costs for the KC-130J engine and propeller requirements. At this meeting, Piedmont recommended that NAVAIR undertake a number of actions to promote competition, such as exercising the agency's rights to obtain technical data, unbundling the engine maintenance and propeller maintenance, and holding an industry day with capable engine, propeller, and maintenance management companies. See Protest at 10; AR at 17.

In addition to meeting with Piedmont, NAVAIR sent letters in April and May to Rolls-Royce and GE Dowty concerning their ICA data for the engine and propeller. See AR, Tab 28, NAVAIR Letter (Apr. 19, 2014), at 1-2; Tab 30, NAVAIR Letter (May 22, 2014), at 1-2. GE Dowty provided a letter, through Rolls-Royce, asserting that data previously provided to the government concerning its propeller were proprietary and could not be disclosed without the firm's consent.⁴ AR, Tab 29, GE Dowty Letter

⁴ GE Dowty previously furnished to the Air Force what the firm described as a complete set of ICA data concerning the R391 propeller in accordance with 14 C.F.R. § 21.50; however, GE Dowty disputed the government's right to distribute this information to third parties, because the propeller was developed at private expense, and the ICA data had been marked proprietary. AR, Tab 27, GE Dowty Letter (April 4, 2014) at 1-2, citing DFARS § 252.222-7015; see also AR at 8.

(Apr. 29, 2014). Rolls-Royce also provided ICA data to the agency regarding the AE2100D3 engine, but excluded certain manuals from disclosure. See AR, Tab 31, Rolls-Royce Letter (June 5, 2014), at 1-2.

Because of the varying interpretations of 14 C.F.R. § 21.50(b) regarding the requirement of a design approval holder (DAH) of an aircraft (e.g., Rolls-Royce or GE Dowty) to provide ICA to the aircraft owner (e.g., the government), and the aircraft owner's right to distribute this information to third parties, NAVAIR requested a legal interpretation of the regulations from the FAA. On June 24, NAVAIR asked the FAA the following two questions:

a. Specifically, 14 CFR § 21.50(b) states in part that a design approval holder (DAH) of an aircraft, aircraft engine, or propeller must furnish a complete set of Instructions for Continued Airworthiness (ICA) to the owner of the aircraft, aircraft engine, or propeller upon its delivery, or upon issuance of the first standard airworthiness certificate for the affected aircraft, whichever occurs later. As stated above, the engine and propeller in question both have FAA Type Certificates, but the affected aircraft has never received a standard FAA Airworthiness Certificate. Do the ICA delivery requirements of the statute apply to the [K]C-130J or its propulsion system in this situation?

b. Further, [NAVAIR] seeks to fully understand a DAH's ability to limit distribution of ICA to current and potential third party maintenance providers. Policy Memo AIR-100-11-100-002, and subsequent FAA legal interpretations, seems to suggest that a DAH may not place any restrictions on the ICA or further distribution thereof by the owner/operator to third party maintenance providers. Specifically, can the owner/operator of an aircraft that has never been issued an FAA standard Airworthiness Certificate distribute ICA for the installed Type Certified engines/propellers (AE2100D3 and R391) to third parties for the purpose of soliciting a commercial repair contract?

See AR, Tab 32, NAVAIR Letter (Jun. 24, 2014).

On August 6, NAVAIR met with Piedmont to discuss the agency's position regarding the FAA regulations, notwithstanding the lack of an official response from the FAA.⁵ The agency advised protester that it did not consider 14 C.F.R. § 21.50(b) to apply

⁵ NAVAIR states that it participated in several telephone calls with the FAA to assist the FAA in understanding the factual basis for its questions. These conversations apparently led to the agency's interpretation of the FAA's regulations, prior to the FAA's official legal interpretation on November 5. See AR at 19.

because the KC-130J is a public aircraft that did not have a standard airworthiness certificate. AR, Tab 33, KC-130J Propulsion Status Brief for Piedmont (Aug. 6, 2014), at 7-9. Further, the agency explained that NAVAIR did not possess the required technical data to conduct a competitive procurement, nor could it distribute the data it has to third party maintenance providers. Id. at 12; see also AR at 19.

On August 12, Piedmont advised NAVAIR that the protester had “confirmed” that NAVAIR still could obtain an airworthiness certificate for the KC-130J, such that the requirements of 14 C.F.R. § 21.50(b) were applicable, if the agency engaged the services of an FAA-designated airworthiness representative (DAR) at an approximate cost of \$5,000. Protest, exh. 15, Piedmont Letter (Aug 12, 2014), at 1. The protester, however, did not provide any correspondence from the FAA regarding this matter.

To clarify this point, on September 2, Piedmont sent a letter to the FAA to address the following two questions:

1. Does a DAH have the obligation to provide a complete set of ICA to a Public Use operator of an FAA Type Certified aircraft, engine and/or propeller that has an airworthiness certificate?
2. If a FAA Type Certified Public Use aircraft was originally delivered without an airworthiness certificate, can the Public Use operator engage the services of a FAA DAR to obtain a standard airworthiness certificate and does the delivery of this airworthiness certificate obligate the DAH to then deliver a complete set of ICA to the Public Use operator?

Protest, exh. 31, Piedmont Letter (Sept. 2, 2014), at 3.⁶

Meanwhile, on August 25, the FAA provided a letter to Piedmont stating that the firm was “capable of holding a Propeller Class Rating that allows Piedmont to maintain, repair, overhaul all [GE] Dowty Aerospace Propellers to include the R391 propeller.” Protest, exh. 4, FAA Letter (Aug. 25, 2014), at 1. Piedmont provided this letter to NAVAIR on September 3. The protester explained that it “has all maintenance manuals, tooling, test equipment, training, procedures and facilities to perform repair and overhaul functions for the R391 propeller.” See AR, Tab 34, Piedmont Letter (Sept. 3, 2014), at 1.

⁶ As discussed below, the FAA responded to Piedmont’s letter on January 2, 2015, while this protest was pending.

In response on September 5, NAVAIR reiterated its position concerning the availability of technical data: that the FAA does not provide airworthiness certificates for public aircraft; that the KC-130J does not have an FAA airworthiness certificate, and the ICA requirement of 14 C.F.R. § 21.50(b) is therefore not applicable; and that even if the regulation were applicable the agency still lacked sufficient technical data to compete the KC-130J propulsion system requirement. See AR, Tab 35, NAVAIR Letter (Sep. 5, 2014), at 1. NAVAIR further explained that the engine and propeller maintenance for the KC-130J has historically been procured under the same contract because the government lacked rights and technical data, as noted above. The agency also stated that a single contract strategy was utilized because of the interdependence of the engine and propeller subsystem components, such as the shared oil system and common digital control system. Id. at 2.

Notice of Intended Sole-Source Award and September 2014 Protest

Also on September 5, NAVAIR issued a presolicitation notice of its intent to award a sole-source modification to Rolls-Royce's contract. The modification added two option years onto the current sole-source contract (which was due to expire on February 28, 2015). The modification was justified on the basis that Rolls-Royce was the only qualified source that possessed the data necessary to perform the effort in a timely and cost effective manner. See AR, Tab 36, Presolicitation Synopsis (Sept. 5, 2014), at 1-2.

On September 15, Piedmont and StandardAero, Inc. each filed protests at our Office challenging NAVAIR's proposed action. Piedmont argued that, contrary to the NAVAIR's representations concerning its corrective action in response to Piedmont's March 10 protest, the agency was proceeding with a sole-source modification of 2 years without a J&A and only a cursory review of its options to open competition. See Piedmont Protest (B-410398, Sept. 15, 2014), at 2. StandardAero, which has a Rolls-Royce AE2100D3 engine authorized maintenance center, challenged the sole-source justification that only one source and no other supplies or services will satisfy the agency requirements. StandardAero asserted that, as a licensee of Rolls-Royce, it has access to all of the data required for the engine requirements, and is otherwise capable of performing all of the services necessary for performance of the requirement. StandardAero Protest (B-410398.2, Sept. 15, 2014), at 1-2; see AR at 22. StandardAero also stated that [DELETED]. Id. The agency concluded that, although the merits of Piedmont's claim concerning the FAA regulations were "unsettled," StandardAero's licensing agreement with Rolls-Royce "likely provided a basis for full and open competition."⁷ AR at 22.

⁷ StandardAero is not a party to this protest, and has not filed a protest with our Office concerning the proposed sole-source award challenged here by Piedmont.

On October 10, NAVAIR again took corrective action in response to Piedmont's and StandardAero's protests.⁸ The agency stated that it would cancel the synopsis and perform additional market research to determine whether it could compete the KC-130J propulsion system requirements. We dismissed the protests (B-410398 and B-410398.2) on October 15.

Corrective Action and Current Protest

On October 29, NAVAIR published a sources sought notice with responses due by December 1 on FedBizOpps to "identify Federal Aviation Administration (FAA) certified and Original Equipment Manufacturer (OEM) licensed aircraft maintenance centers that can provide comprehensive logistics support for [47 USMC and 3 FMS aircraft consisting of 250 Lockheed Martin Quick Engine Change Kits, 252 Rolls-Royce AE2100D3 power sections (engines, and 247 GE/Dowty R391 propellers]." AR, Tab 42, Source Sought Synopsis (Oct. 29, 2014), at 2. The agency received responses from five firms, including Piedmont and StandardAero, by the closing date.

On November 5, NAVAIR received the FAA's answers to the questions it posed regarding 14 C.F.R. § 21.50(b), and whether DAHs (such as Rolls-Royce and GE Dowty) must provide ICA data to the agency, and whether the agency could then distribute that information to third parties. See AR, Tab 43, FAA Letter (Nov. 5, 2014), at 1. The FAA explained that the agency's enabling statute charges the agency with ensuring flight safety involving civil aircraft, which is defined as an aircraft except a public aircraft; in contrast, the statute defines public aircraft as including aircraft owned and operated by the armed forces. See id. at 3. Since NAVAIR operates the KC-130J as a public aircraft, the FAA concluded that the regulations did not apply to the situation identified by NAVAIR: "The [K]C-130J (being the 'affected aircraft') is not eligible for an FAA standard airworthiness certificate; therefore, the engine and propeller DAHs are not . . . required by § 21.50(b) to furnish a complete set of ICA for their respective products." Id. As to the second question, the FAA stated under FAA policy an aircraft owner is "encouraged" to furnish ICA to third party maintenance providers, but that the right to furnish such information in NAVAIR's case would depend on the terms of its contract. Id. at 4. The FAA specifically advised that:

Whether NAVAIR may provide those ICA to maintenance providers of its choice would have to be resolved in a particular case as a civil matter between the parties, and the result may depend on the terms of

⁸ NAVAIR states that it first learned of StandardAero's licensing agreement with Rolls-Royce through the company's protest. See NAVAIR Legal Statement at 22.

the contract between them. The FAA's regulatory scheme does not apply to those aircraft.

Id.

On November 26, NAVAIR published a presolicitation notice of its intent to award a sole-source indefinite-delivery, indefinite-quantity contract to Rolls-Royce for propulsion systems support for the USMC KC-130J aircraft, including the AE2100D3 engine and R391 propeller system. AR, Tab 1, Sole-Source Notice (Nov. 26, 2014), at 1. The contract contemplated a contract for a base year, with one 1-year option, and an estimated value of \$133.7 million. The notice stated that award would be made on a sole-source basis to Rolls-Royce in accordance with Federal Acquisition Regulation (FAR) § 6.302-1 because only one responsible source will satisfy the agency's requirement and award to any other source would result in unacceptable delays in fulfilling the agency's requirements. Id. at 3. The notice also stated that the government intends to conduct a full and open competition for the ongoing requirement with a planned industry day in March 2015 and an anticipated follow-on contract award in June 2016. Finally, the notice explained that the 2-year sole-source contract was needed to ensure continuity of services until the competitive contract could be awarded. Id.

The agency prepared a draft J&A supporting the proposed sole-source award, which was finalized after the December 1 closing date for the receipt of responses to the sources sought notice. AR at 33-34. The agency states that the draft J&A will be finalized at the time the agency awards the sole-source contract to Rolls-Royce. Id. The draft J&A states that Rolls-Royce has been the provider of the requirement since December 2002, and that, historically, Rolls-Royce (and its subcontractor GE Dowty) has been the only source that possessed the requisite knowledge and technical data to satisfy the requirement. See AR, Tab 2, Draft J&A, at 2. The draft J&A explains that NAVAIR learned in September 2014 that StandardAero "may have the data required to perform this requirement by virtue of concluding a license agreement with RRC for work on the engine subsystem and [DELETED] for work on the propeller subsystem." Id. at 2-3. The justification document also recognizes that, based on the response to the October 2014 sources-sought notice, "[t]he Government was also notified by another source, Piedmont Propulsion Systems, LLC (PPS), that it believed it possessed sufficient capability and technical data to perform at least a portion of the requirement." Id. at 3.

With regard to a future competitive procurement, the draft J&A states "the Government intends to move from a sole-source acquisition strategy to a competitive acquisition strategy and complete a full and open competition for this requirement no later than February 2017, with the goal of completing it sooner (target is June 2016)." Id. at 3. In its report on the protest, NAVAIR estimates based on comparable procurements, that it may take up to 19.8 months to conduct

the procurement. AR at 38; Tab 45, Decl. of Source Selection Evaluation Board Chair, at 4.

The draft J&A further explained that the KC-130J aircraft are a critical assault element of the USMC's marine air ground task force; that delays in an award would result in grounded aircraft; and that any degradation of KC-130J readiness due to the stoppage of services would compromise the USMC's crisis response readiness across the globe. Id. In addition to highlighting the impact to operational readiness, the draft J&A noted that reduced KC-130J aircraft availability would degrade Marine expeditionary force training capabilities, thereby impacting future readiness. Id. The draft J&A concluded that suspension of the maintenance and repairs requirement until a full and open competition can be planned and completed is unacceptable, given the gap in critical USMC mission readiness that would occur. Id. For these reasons, in light of the current contract expiring on February 28, 2015, a sole-source contract award is needed to ensure continuity of services until the agency could award a competitive contract. Id.

This protest from Piedmont followed on December 8.⁹

DISCUSSION

This protest concerns NAVAIR's proposed sole-source award to Rolls-Royce, which was announced in the agency's November 26, 2014 presolicitation notice, and which the agency contends is appropriate for the reasons set forth in the draft J&A. This contract is intended to meet the agency's requirements for logistics support for the KC-130J propulsion system, including engine and propeller maintenance and repair, after the current sole-source contract with Rolls-Royce expires on February 28, 2015.¹⁰

Piedmont does not specifically dispute NAVAIR's representations concerning the estimated time required to conduct a competitive procurement, nor does the protester dispute the agency's representations concerning its need for the services. Instead, Piedmont argues that the proposed sole-source award is improper because the agency failed to reasonably consider whether the protester could perform the

⁹ Another protest challenging the proposed sole-source was filed by Jet Support Services, Inc. (B-410914.1). This protest was withdrawn on January 21, 2015.

¹⁰ NAVAIR advises that, on February 10, 2015, the agency issued a modification that extended the performance period for the current contract from February 28, to March 23, in order to ensure performance through the March 18 due date for our Office's decision concerning this protest. Email from Agency Counsel (Mar. 10, 2015).

propeller requirements. The protester further contends that the agency's actions reflect a lack of advance planning, in part because the agency failed to reasonably consider Piedmont's suggestions on how the agency could compete the requirement. The protester also argues that the agency's proposed sole-source award improperly bundles the requirements for the propeller with the other requirements, such as the engine. For the reasons discussed below, we find no basis to sustain the protest.¹¹

CICA requires agencies to obtain full and open competition in its procurements through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A). However, CICA permits an exception to use other than competitive procedures where there is only one responsible source able to meet the agency's requirement. See 10 U.S.C. § 2304(c)(1); FAR § 6.302-1; Barnes Aerospace Grp., B-298864, B-298864.2, Dec. 26, 2006, 2006 CPD ¶ 204 at 4. As relevant here, for purposes of applying this exception, CICA provides as follows:

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when it is likely that award to a source other than the original source would result in--

(i) substantial duplication of cost to the United States which is not expected to be recovered through competition; or

(ii) unacceptable delays in fulfilling the agency's needs.

10 U.S.C. § 2304(d)(1)(B).

Under CICA, however, noncompetitive procedures may not properly be used where the procuring agency created the need to use such procedures through a lack of advance planning. See 10 U.S.C. § 2304(f)(5)(A); New Breed Leasing Corp., B-274201, B-274202, Nov. 26, 1996, 96-2 CPD ¶ 202 at 6. With regard to advance planning, however, our Office has recognized that the requirement for advance planning does not mean that such planning be completely error free or successful. See Barnes Aero Grp., supra, at 4; Pegasus Global Strategic Solutions, LLC, B-400422.3, Mar. 24, 2009, 2009 CPD ¶ 73 at 9.

¹¹ The protester raises numerous collateral arguments. Although we do not address every issue raised by the protester, we have reviewed them all and find that none provides a basis to sustain the protest.

When using noncompetitive procedures pursuant to 10 U.S.C. § 2304(c)(1), such as here, agencies must 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 §§ 6.302-1(d)(1), 6.303-1, 6.303-2, 6.304. Our review of an agency's decision to conduct a noncompetitive procurement focuses on the adequacy of the agency's 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.

Piedmont's Capabilities and Technical Data

Piedmont first argues that the draft J&A unreasonably concludes that Rolls-Royce was the only source available to perform the propeller requirements. The protester contends that it is capable of performing the requirements, and that the agency unreasonably ignored the protester's statements concerning its capabilities, dating back to October 2012.

As discussed above, Piedmont responded to the agency's September 2012 presolicitation notice of intent to enter into a sole-source contract with GE Dowty to procure R391 propeller systems and parts. The record reflects that the protester's response did not specifically claim that it possessed the requisite technical data to manufacture, sell, maintain the propeller; instead, the protester informed NAVAIR that it was generally capable of maintaining the "propeller systems of this class and category," and urged the agency to use the provisions of the FAA regulations, at 14 C.F.R § 21.50(b), to require GE Dowty to provide the necessary ICA information to permit a competitive procurement. See AR, Tab 8, Piedmont Letter (Oct. 24, 2012), at 1-2; Tab 9, Conference Call Minutes, at 3. The agency concluded that Piedmont did not have the required data and was instead seeking the agency's assistance to obtain the ICA data under FAA regulations. See AR, Tab 9, Conference Call Minutes, at 3; AR at 10. The agency also concluded that 14 C.F.R § 21.50(b) did not provide the agency the right to obtain GE Dowty technical data. AR, Tab 11, NAVAIR Letter (Jan. 29, 2013) at 1-2; AR at 11. On this record, we conclude that the protester does not establish that in 2012 NAVAIR should have considered Piedmont to be capable of meeting the requirements of the proposed sole-source contract.

The next opportunity that NAVAIR had to consider the capabilities of Piedmont occurred in connection with the agency's issuance of a J&A authorizing the award of multiple sole-source delivery orders to GE Dowty for propellers and spare parts in August 2013. In response to the J&A, however, Piedmont did not represent that it possessed the required technical data to manufacture the parts or to perform the propeller maintenance requirements. Instead, the protester requested that NAVAIR undertake a more detailed review of the FAA regulation that it maintained allowed

NAVAIR to require GE Dowty to furnish a complete set of ICA maintenance data for the propeller. See AR, Tab 15, Piedmont Letter (Sept. 19, 2013), at 5; Tab 17, Piedmont Letter (Oct. 1, 2013), at 1. Here again, on this record, we find the protester has not established that it provided information which should have reasonably led the agency to conclude that Piedmont could perform the propeller requirements.

In September 2014, Piedmont advised NAVAIR that the FAA had provided a letter stating that the firm was “capable of holding a Propeller Class Rating that allows Piedmont to maintain, repair, overhaul all [GE] Dowty Aerospace Propellers to include the R391 propeller.” Protest, exh. 4, FAA Letter (Aug. 25, 2014), at 1; AR, Tab 34, Piedmont Letter (Sept. 3, 2014), at 1. As discussed above, Piedmont’s letter claimed that it had all “maintenance manuals, tooling, test equipment, training, procedures and facilities to perform repair and overhaul functions for the R391 propeller.” AR, Tab 34, Piedmont Letter (Sept. 3, 2014), at 1. The protester, however, did not specifically state that Piedmont had GE Dowty’s technical data for the propeller, nor did Piedmont provide a basis to the agency to believe otherwise, such as a license or a list of documents in its possession demonstrating its ability to meet the agency’s requirements. The agency states that, in light of the protester’s continued requests that the agency use the FAA regulatory process to obtain ICA maintenance data, it concluded that the protester did not in fact have the required data to perform the propeller maintenance requirements. AR at 19-20; see AR, Tab 36, Presolicitation Synopsis (Sept. 5, 2014), at 1-2. In the absence of clear evidence of Piedmont’s capability, we conclude that the agency reasonably discounted the protester’s representations in September 2014.

Following NAVAIR’s issuance of the sources sought notice in October 2014, the protester again stated that it was capable of performing the propeller maintenance requirements, and specifically identified a number of GE Dowty manuals that it said were in Piedmont’s possession. See AR Tab 57, Piedmont Response, Part 1, at 20-21. This response, however, was dated December 1, 2014. Even if the protester’s response should be viewed as a basis to conclude that it is capable of performing the propeller requirements--a point the agency does not specifically address--we do not think that the response shows that the agency failed to engage in a lack of advance planning, given the impending February 28, 2015, expiration date for the current contract, and the agency’s representations that a competitive procurement could take up to 19 months. On this record, we find no basis to conclude that the agency’s actions reflect a lack of advance planning.¹²

¹² Piedmont also argues that it advised the agency of StandardAero’s ability to perform the engine requirements, prior to that firm’s protest in September 2014. Even assuming the protester did advise the agency as to the other firm’s potential capabilities, this information does not demonstrate that the protester was capable of performing the propeller work that it contends should not have been procured on a

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FAA Regulations and ICA Data

Next, Piedmont argues that NAVAIR failed to engage in advance planning because it did not take reasonable actions to obtain the technical data required to permit a full and open competition. The protester primarily argues that the agency could have used the processes set forth in the FAA regulations discussed above to obtain ICA data from GE Dowty for the propellers. The protester argues that these data could have been provided to the protester, which would have allowed it to perform the work, or could have been used by the agency to prepare a technical data package that would have permitted competitive procurement. We find no merit to these arguments.

As discussed above, Piedmont in October 2012 requested that NAVAIR use the processes set forth in the FAA regulations to obtain the ICA data. See AR, Tab 8, Piedmont Letter (Oct. 24, 2012), at 2. After numerous exchanges with the protester, the agency advised that it did not believe that the FAA's regulations provided a basis to obtain the ICA data for the uses the protester suggested. AR, Tab 11, NAVAIR Letter (Jan. 9, 2013), at 1.

In February 2014, NAVAIR awarded a sole-contract to Rolls-Royce that contained the same requirements that are at issue in this protest. Piedmont protested this award, and again argued that the agency could obtain ICA data through the FAA regulations that would permit a competitive procurement. The agency took corrective action in response to the protest, and stated it would review the data it had, and its options for obtaining additional data. As noted above, the agency met with Piedmont in April, requested that Rolls-Royce and GE Dowty provide complete ICA information, and requested the FAA to provide guidance on the applicability of 14 C.F.R. § 21.50(b).

NAVAIR advised Piedmont in August 2014 that it lacked the required technical data to conduct a competitive procurement, and that, in the agency's view, the FAA regulations did not provide authority for the distribution of Rolls-Royce or GE Dowty

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sole-source basis. In this regard, Piedmont is not an interested party to challenge the agency's failure to consider another firm for requirements that the protester does not state it can perform. See Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2014). Moreover, the protester does not demonstrate that it advised the agency of the information that NAVAIR found to conclude that StandardAero could be a source for the requirements--that is, StandardAero's agreements with Rolls-Royce and GE Dowty, of which StandardAero advised the agency in its September 2014 protest.

technical data to third parties. AR, Tab 33, [K]C-130J Propulsion Status Brief for Piedmont (Aug. 6, 2014), at 7-9, 12; see also AR at 19. The protester then advised NAVAIR that it had “confirmed,” contrary to the agency’s view, the FAA regulations could be used in the manner the protester argued to obtain the ICAs, and the information could be provided to third parties. Protest, exh. 15, Piedmont Letter (Aug 12, 2014), at 1. The protester, however, did not provide any specific information to support this statement.

NAVAIR received a letter from the FAA in November 2014, advising that 14 C.F.R. § 21.50 “does not apply at all to the KC-130J aircraft because it is not an aircraft that has an FAA-issued type certificate.” See AR, Tab 43, FAA Letter (Nov. 5, 2014), at 1. For that reason, the FAA stated that the regulations did not require firms such as Rolls-Royce or GE Dowty to provide ICA data. Id. The FAA also advised that, its view, even if data were provided to the agency, the contracts between the agency and the owners of the data, rather than the FAA regulations, would govern the distribution of that data to third parties. Id. As discussed above, GE Dowty disputed the agency’s right to distribute its technical data to third parties, such as Piedmont. AR, Tab 31, Rolls-Royce Letter (Jun. 5, 2014), at 1-2.

On January 2, 2015, prior to the due date for the agency report, the FAA provided a letter to Piedmont addressing the questions in the protester’s September 2, 2014, letter. As noted above, Piedmont asked: (1) whether the provisions in 14 C.F.R. § 21.50(b) that require a DAH to furnish complete ICA to the owner of each type aircraft, engine, or propeller apply when the person seeking the ICA is a public-use operator of an FAA certified aircraft, engine and/or propeller that has an airworthiness certificate, and (2) whether the operator of an aircraft originally delivered without an FAA airworthiness certificate could engage the services of an FAA DAR to obtain a standard airworthiness certificate, and whether obtaining a standard airworthiness certificate in this manner obligates the DAH to furnish complete ICA data to the public aircraft operator. See FAA Letter (Jan. 2, 2015), at 1. Regarding the first question the FAA advised that whether the aircraft is operated as a civil aircraft or a public aircraft is not dispositive. Id. The FAA stated that the DAH would be required to furnish ICA data to an owner, regardless of whether the aircraft is operated as a civil or public aircraft, if the aircraft has an FAA-type certificate when delivered to the owner, or if the FAA has issued an airworthiness certificate. Id. at 3. As to the second question, the FAA advised that an owner of a public aircraft could engage the services of a DAR to obtain a standard airworthiness certificate, for an aircraft delivered without an FAA certificate. Id. at 2-3.

In light of the FAA’s November 2014 letter to NAVAIR, we think the agency reasonably concluded that the FAA regulation did not authorize the agency to obtain the technical data needed to permit a full and open competition in the manner advocated by the protester. Even if the January 5, 2015, letter represents a different or more accurate interpretation of the FAA’s regulations, there is no basis

to conclude that NAVAIR failed to engage in adequate advance planning.¹³ At best, the two letters reflect different or competing interpretations of the FAA regulation; the discovery of such a possible divergence in interpretations a month before the current contract is due to expire does not demonstrate that the agency engaged in a lack of advance planning.

Other Possible Actions in Pursuit of a Competitive Procurement

Finally, Piedmont contends that NAVAIR should have taken more aggressive actions to pursue a competitive procurement. For example, the protester argues that the agency should have acted more expediently to issue the sources sought notice (which was issued in October 2014), and to conduct the industry day (currently anticipated to occur March 2015). We find no basis to sustain the protest.

The record here shows that the agency is currently pursuing a competitive procurement, and anticipates an award by June 2016. See AR, Tab 1, Sole-Source Notice (Nov. 26, 2014), at 1; Tab 2, Draft J&A, at 2. As discussed above, NAVAIR did not believe, prior to taking corrective action in response to Piedmont's and StandardAero's September 2014 protests, that the agency had the data required to pursue a competitive procurement, or that there were other firms capable of meeting the requirements. Thus, neither the protester's representations concerning its own capabilities, nor the protester's arguments regarding the FAA's regulations regarding ICAs, provides a supportable basis to conclude that the agency should have acted more quickly to conduct a competitive procurement.

¹³ As the agency and intervenor note, the FAA's November 2014 letter appears to be a specific statement concerning the applicability of the regulation to the KC-130J aircraft, whereas the FAA's January 2015 letter appears to be a more general statement regarding procedures which could apply, if certain additional steps were taken by the agency to seek an FAA certification of a public aircraft--even though such a certification is not required or typically issued by the FAA. Additionally, the agency and intervenor dispute the protester's view that the January 2015 letter demonstrates that obtaining the ICAs through the FAA regulation could be used to facilitate a full and open competition. In this regard, GE Dowty has stated that it disputes the government's right to release its data to third parties. AR, Tab 27, GE Dowty Letter (April 4, 2014) at 1-2; Tab 29, GE Dowty Letter (Apr. 29, 2014). Moreover, the November 2015 letter reflects the FAA's view that the rights of the aircraft owner (e.g., the government) to release the ICAs to third parties would be governed by the individual contracts between the DAHs (e.g., Rolls-Royce and GE Dowty) and the owner, rather than the terms of the regulation itself because "[t]he FAA's regulatory scheme does not apply to those aircraft." AR, Tab 43, FAA Letter (Nov. 5, 2014), at 3.

Moreover, we think the record here shows that the agency reasonably moved toward conducting a competitive procurement. In this regard, it appears that the agency's decision to seek a competitive procurement for its requirements was driven by its understanding of StandardAero's capabilities, rather than Piedmont's. See AR at 22. As discussed above, the agency took corrective action in response to StandardAero's and Piedmont's protests on October 10, 2014. The agency issued a sources-sought notice on October 29, requesting that interested offerors describe their abilities to meet the agency's requirements. AR, Tab 42, Source Sought Synopsis (Oct. 29, 2014), at 2. The agency also received its response from the FAA regarding 14 C.F.R. § 21.50. AR, Tab 43, FAA Letter (Nov. 5, 2014), at 1. Based on this information, NAVAIR concluded that a competitive procurement could not be completed by the Feb. 28, 2015, expiration of the existing contract. See AR, Tab 2, Draft J&A, at 2-3.

In sum, for the reasons discussed above, we find no basis to conclude that NAVAIR's actions, or a failure to conduct advance planning, caused the agency's need to use noncompetitive procedures. As noted above, the agency states it intends to conduct a full and open competition for the ongoing requirement. We therefore find no basis to object to the agency's intended interim sole-source award.¹⁴

The protest is denied.

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General Counsel

¹⁴ In light of our conclusion above that NAVAIR's sole-source award to Rolls-Royce was justified under 10 U.S.C § 2304(c)(1), because that was the only firm that could meet the agency's requirements within the time required, we need not address the protester's argument that the award improperly bundled the propeller and engine requirements. To the extent the protester argues that the future competitive requirement should not be bundled, this issue is premature, as the agency has not issued a solicitation for the requirements. In the event the agency combines the engine and propeller requirements in a competitive procurement, the protester may challenge that issue, subject to the provisions of our Bid Protest Regulations.