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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: J&J Colombia Services MV LTDA

File: B-299595.3

Date: June 26, 2007

John C. Dulske, Esq., and Joan K. Fiorino, Esq., Dulske & Fiorino, PC, for the protester.

Michael F. Mason, Esq., Thomas L. McGovern III, Esq., and Michael D. McGill, Esq., Hogan & Hartson LLP, for PAE Colombia LTDA, an intervenor.

Maj. Jayanth Jayaram, Department of the Army, for the agency.

Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly awarded interim contract on sole-source basis is denied where award of long-term contract for same services was delayed by litigation and agency reasonably determined that only the incumbent contractor was in a position to perform urgently required services.

DECISION

J&J Colombia Services MV LTDA protests the Department of the Army's sole-source award of an interim contract to PAE Colombia LTDA under request for proposals (RFP) No. W913FT-07-R-0018, for logistics support services required by the U.S. Military Group (USMILGP) located in Bogota, Colombia, and other government agencies throughout Colombia. J&J argues that the sole-source award was solely the consequence of the Army's lack of advance planning, and therefore was improper.

We deny the protest.

By way of background, one of the primary missions of the USMILGP in Colombia is to support the overall U.S. strategy to defeat narcotics trafficking and narco-terrorism in Colombia. In cooperation with the U.S. Embassy, other U.S. agencies, and the government of Colombia, the USMILGP in Colombia provides security assistance and military-to-military contact in order to eliminate/reduce drug trafficking and narco-terrorism; strengthen Colombian military professionalism; conduct anti-drug operations; and eliminate the threat to Colombia's sovereignty and democracy.

On December 29, 2006, the Army issued a competitive solicitation, RFP No. W913FT-07-R-0001, for the USMILGP's required logistics support services in Bogota, Colombia, which include supply support activities/warehouse operations, property book and unit supply support, transport and customs support, vehicle maintenance and repair parts support, and facilities administration. In response to the RFP, the Army received timely proposals from several offerors, including J&J and PAE. J&J was advised by letter of March 1, 2007 that it would be awarded the contract; however, a few days later, the Army advised J&J by letter that the award notice had been issued "prematurely and in error," and that discussions would be conducted with the competitive-range offerors. On March 26, the Army made award to PAE, the incumbent contractor. PAE had been performing under a previous competitively awarded contract, which had an expiration date of March 29, 2007. J&J timely protested PAE's award to our Office on March 29.¹ As a consequence of J&J's protest, the Army was required to stay contract performance. See 31 U.S.C. § 3553(d)(3)(A) (2000). On that same day, the Army sent PAE the solicitation at issue in this current protest, RFP No. W913FT-07-R-0018, for the award of a sole-source interim contract to provide the same services as required under the contract that had been stayed due to the protest filed by J&J. The period of performance was 4 months with one 6-month option period. The Army awarded PAE the interim contract on March 30.

On March 30, the Army prepared a justification and approval (J&A) citing Federal Acquisition Regulation (FAR) § 6.302-2, Unusual and Compelling Urgency, as justification for not seeking full and open competition for its requirements under the interim contract. The J&A indicated that continuity of the logistics support services was "critical" to the operation and performance of the USMILGP mission in Colombia. Agency Report (AR) Tab 7, J&A, at 3. If the services were not maintained, the Army stated, its security assistance and cooperation efforts would be brought to "an almost complete standstill," and there would be a serious degradation of security and force protection. *Id.*; AR, Tab 14, Affidavit of Commander for the USMILGP Colombia, Apr. 27, 2007, at 2.

Due to the critical nature of the required services and the resulting disruption to its mission and increased costs associated with transitioning to other than the incumbent contractor, PAE, the Army concluded that there was no viable alternative to a sole-source contract with PAE for obtaining the required services during the period of the protest with our Office. In this regard, the Army expressly stated that:

there are no alternatives that would meet mission requirements without significant and critical interruptions to mission and a

¹ The agency ultimately advised that it would take corrective action in that protest. Our Office therefore dismissed J&J's protest as academic on May 24.

significant increase in cost given [the] time required to award and transition the logistics support and services requirements to another contractor. A bridge contract to the current contract is the ONLY alternative given the protest for the final Logistics Support and Professional Services Contract.

AR, Tab 7, J&A, at 3.

J&J timely protested the award of the interim contract to our Office. In its protest, J&J does not dispute the critical nature of the required services or argue that the services need not be performed while awaiting resolution of its protest. Rather, J&J argues that the need for a sole-source award was precipitated by the Army's lack of advance planning.² According to J&J, the Army should have known in February, or by early March at the latest, before the expiration of PAE's incumbent contract, that there was going to be a need for a bridge contract and that the Army failed to adequately plan for this contingency.

As general matter, the Competition in Contracting Act of 1984 (CICA) requires agencies to conduct their procurements using "full and open competition." 10 U.S.C. § 2304(a)(1)(A) (2000). CICA, however, permits noncompetitive acquisitions in specified circumstances, such as when the agency's need for the services is of unusual and compelling urgency. Specifically, the exception provides as follows:

An executive agency may use procedures other than competitive procedures only when . . . (2) the agency's need for the property or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals.

10 U.S.C. § 2304(c)(2); see also FAR § 6.302-2(a)(2). An agency, however, may not use noncompetitive procedures due to its lack of advance planning. 10 U.S.C. § 2304(f)(5)(A); see also FAR § 6.301(c).

Here, there is no basis to conclude the Army's decision to award a sole-source contract to PAE was the result of a lack of advance planning. In fact, the record shows that the award of the bridge contract to PAE was the result of the confluence of several factors with J&J's filing of its protest, which led to a stay of performance of the competitively awarded long-term contract. As described above, and as discussed in the Army's J&A, when J&J filed its protest of the

² This protest filing triggered another automatic stay of the contract, which the Army subsequently overrode in accordance with FAR § 33.104(c)(2).

long-term contract, thereby invoking the statutory stay of that contract under CICA, the agency was left without a contract vehicle to obtain the critical services it required since the incumbent contract was set to expire that same day. Given the associated transition period accompanying an award to other than the incumbent contractor, and the performance gap that would have occurred during such a transition, the Army reasonably concluded that award to other than the incumbent was not a viable alternative in light of the critical nature of the required logistics services.

While J&J contends that the Army should have recognized the need for a bridge contract much earlier since the incumbent contract was set to expire at the end of March and the procurement was not then complete, the fact remains that the actual requirement for the bridge contract did not arise until J&J filed its protest, a contingency which was outside the agency's control. Absent J&J's protest, there simply was no need for a bridge contract since the Army had awarded the long-term contract before the expiration of the incumbent contract.³ Given the imminent expiration of the incumbent contract, the gap in services associated with transitioning to a contractor other than the incumbent, and J&J's filing of its protest, the Army reasonably decided to award the bridge contract to PAE so that it could continue to perform the critical logistics services on an uninterrupted basis during the pendency of J&J's protest with our Office. See Chapman Law Firm Co., LPA, B-296847, Sept. 28, 2005, 2005 CPD ¶ 175.

The protest is denied.

Gary L. Kepplinger
General Counsel

³ In support of its allegation that the agency failed to engage in advance planning for the bridge contract, J&J relies on our decision in VSE Corp., Johnson Control World Servs., B-290452.3 et al., May 23, 2005, 2005 CPD ¶ 103. J&J's reliance on this decision is misplaced, however, since, unlike in the case at hand, in VSE Corp., Johnson Control World Servs., the agency, after canceling its competitive solicitation, noncompetitively extended a contract that had been noncompetitively awarded 4 years earlier, without executing a J&A for the extension. Further, it was clear from the record that the contract extension, which the agency argued was justified due to transition concerns, was the direct result of the agency's unreasonable delay in deciding to cancel the competitive solicitation and thereby reflected the agency's lack of advance planning.