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# Decision

**Matter of:** Career Systems Development Corporation

**File:** B-411346.11; B-411346.12; B-416021; B-416021.2

**Date:** May 18, 2018

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## DIGEST

1. Protest of agency’s decision to cancel a solicitation is denied where the agency contemporaneously documented four compelling rationales that support the reasonableness of the cancellation.
  2. Protest of agency’s award of a sole-source contract awarded on the basis that the awardee was the only responsible source is sustained where the agency failed to meaningfully consider whether the protester was capable of performing the procured services.
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## DECISION

Career Systems Development Corporation (CSD), of West Henrietta, New York, protests the Department of Labor’s (DOL) decision to cancel request for proposals (RFP) No. DOLJ13PA20010, and to award contract No. 1630J2-18-C-0008 to Management & Training Corporation (MTC), of Centerville, Utah, for the operation of the Earle C. Clements Job Corps Center (JCC) in Morganfield, Kentucky. CSD challenges the agency’s decision to award MTC the contract on a sole-source basis, and objects to DOL’s decision to cancel the competitive solicitation for the services.

We deny the protest in part and sustain the protest in part.

## BACKGROUND

The Job Corps is a national residential training and employment program administered by DOL to address barriers to employment faced by disadvantaged youth through the United States. Under the program, DOL provides comprehensive career development services to students, including academic, career technical, career success, career readiness, and independent living skills training, as well as related support services. Agency Report (AR), Tab 7, Sole-Source Contract, at 9.<sup>1</sup> The procurement at issue here involves the operation of the Clements JCC, which operates on a 24-hour/7-days a week basis as a residential training center for at-risk youth. Memorandum of Law/Contracting Officer's Statement (MOL/COS) (B-416021) at 2.

For the past several years, DOL has been attempting to award a contract on a competitive basis for the operation of the center over a 5-year period of performance. Specifically, the agency first issued request for proposals (RFP) No. DOLJ13PA20010 on a full and open basis in February 2013.<sup>2</sup> Id. Two years later, in March 2015, DOL awarded the contract to CSD. MTC (and two other disappointed offerors) protested the award (B-411346.1-4), and the agency promptly took corrective action in May 2015 to include reexamining the evaluation of proposals and making a new award decision; our Office dismissed the protests as academic. The agency re-awarded the contract to CSD in January 2016, and MTC again protested (B-411346.5, B-411346.6). After development of MTC's protest, and following a hearing by our Office, the GAO attorney assigned to the protest advised the parties during alternative dispute resolution of errors in the procurement that would likely result in a decision sustaining MTC's protest. In response, DOL again took corrective action in May 2016.<sup>3</sup>

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<sup>1</sup> While this decision addresses two separate CSD protests, the agency filed documents in response to only one of the protests. As such, all citations to the agency report are to the documents submitted by DOL in response to B-406021.

<sup>2</sup> MTC served as the incumbent contractor operating the Clements JCC. The firm's competitively awarded contract expired in September 2011. AR, Tab 9, RFP Cancellation Memo., at 7. Since then, MTC has been operating the Clements JCC under a series of sole-source contracts extending its performance, such as the one at issue here. See id.

<sup>3</sup> In March 2017, pending the completion of the corrective action, DOL issued a notice of its intent to award MTC another short-term, sole-source contract to continue its performance at the Clements JCC. Protest (B-416021) at 8. CSD responded to the agency's announcement and provided DOL with a capability statement detailing the firm's ability to operate the center. See id., exh. 9, CSD Capability Statement (2017), at 1-13. DOL did not respond to CSD's expression of interest. Id. CSD therefore protested the sole-source award (B-411346.7, B-414565), but subsequently withdrew its protests when it learned that DOL intended to complete its corrective action and make a new award within a few months. Id. at 9.

A year later, in May 2017, DOL requested and received revised final cost proposals from eight offerors in the competitive range. Following its reevaluation of proposals, this time DOL determined that MTC's proposal represented the best value, and the agency awarded the contract to MTC on November 29, 2017. CSD protested MTC's award on December 13, 2017, and filed a supplemental protest in January 2018 following receipt of the agency's report (B-411346.8, B-411346.9).<sup>4</sup> Thereafter, on January 25, 2018, the agency again elected to take corrective action. Specifically, the agency indicated that it intended to "reexamine the proposals of all offerors" and terminate MTC's competitively awarded contract. See Protest, exh. 15, Corrective Action Email, Jan. 25, 2018 (4:14 p.m.).<sup>5</sup> The agency further represented that it intended to award MTC a "new short-term, sole-source contract . . . to MTC . . . to maintain the status quo." Id. Thereafter, our Office dismissed CSD's protest and supplemental protest as academic. Career Sys. Dev. Corp., B-411346.8, B-411346.9, Feb. 6, 2018 (unpublished decision).

### Sole-Source Contract

On January 30, DOL published on the Federal Business Opportunities (FBO) website a special notice of its intent to award a sole-source contract to MTC for the operation of the Clements JCC. Protest, exh. 16, FBO Special Notice, at 1-2. The special notice indicated that the contract would include a 6-month base period and an option to extend services for an additional 6 months. Id. at 1. In addition, the special notice invited "all responsible parties" to submit capability statements by February 7. Id.

On January 31, DOL's chief procurement officer executed a justification for the use of other than full and open competition to approve the sole-source award to MTC.<sup>6</sup> AR, Tab 4, J&A, at 1-5. The J&A cited the authority to use other than full and open competition when only one responsible source exists and no other supplies or services will satisfy the agency's requirements. Id. at 2, citing 41 U.S.C. § 3304(a)(1) and Federal Acquisition Regulation (FAR) § 6.302-1. The J&A recited the procurement history, and explained that the sole-source contract was to "maintain the status quo and

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<sup>4</sup> Subsequent to the filing of CSD's December 2017 protest, the agency elected to override the Competition in Contracting Act (CICA) automatic stay of contract performance--citing the best interests of the United States and urgent and compelling circumstances--to permit MTC to continue to operate the Clements JCC under the competitively awarded contract. See Protest (B-416021), exh. 11, CICA Stay Override Memo, Dec. 29, 2017, at 1-7; see also 31 U.S.C. § 3553(d)(3)(C)(i).

<sup>5</sup> Although our Office docketed CSD's protests as two separate matters, the protester continued its exhibit numbering format in support of both of its protests.

<sup>6</sup> The contracting officer and a technical/requirements official signed the Justification and Approval (J&A) on January 29. AR, Tab 4, J&A, at 5. DOL's Procurement Review Board also concurred with the sole-source contract to MTC. AR, Tab 5, Approval of Assistant Secretary, at 1.

ensure continued operations” at the center. Id. at 3. The J&A also elaborated on the need for the uninterrupted operation of the center while DOL continued its “competitive procurement process for the successor contract.” Id. The J&A concluded that MTC, as the incumbent contractor, was the only firm that could continue operating Clements “without disruption of services.” Id. Notably, the J&A stated that special notice of the intent to award the sole-source contract was not posted to FBO, and that no other firms expressed interest in the acquisition. Id. at 3-4.

The same day the J&A was executed, DOL awarded MTC the sole-source contract at issue here to maintain operations at Clements. AR, Tab 7, Sole-Source Contract, at 1. Consistent with the special notice, the \$25.9 million cost-plus-fixed-fee contract covers a 6-month base period and includes an optional 6-month extension. Id. at 7, 25-27.

The next day, on February 1, DOL published on the FBO website notice that it had awarded the sole-source contract to MTC. Protest, exh. 1, FBO Notice of Award, at 1-2. The award notice did not contain a copy of the J&A. On February 6, after notice of award but still prior to the deadline for the submission of capability statements, CSD submitted to DOL its capability statement.<sup>7</sup> AR, Tab 6, CSD Capability Statement (2018), at 1-10. In it, CSD summarized the firm’s “unique qualifications” to operate the Clements JCC and discussed its “readiness to provide a rapid transition.” Id. at Cover Letter. On February 12, CSD timely filed a protest with our Office challenging the sole-source award to MTC. See Protest (B-416021) at 1-17. CSD filed a supplemental protest after it received and reviewed the agency’s J&A.<sup>8</sup> See Supp. Protest (B-416021.2) at 1-8.

#### Solicitation Cancellation

On February 27, the contacting officer canceled the original 2013 Clements RFP. CSD protested this decision and supplemented its protest following the receipt and review of DOL’s memorandum documenting the agency’s rationale for the cancellation. See Protest (B-411346.11) at 1-8; Supp. Protest (B-411346.12) at 1-12. On April 10, the agency issued a new solicitation on a full and open basis for the operation of the Clements JCC (RFP No. 1630J2-18-R-00004) with a proposal submission deadline of May 11. Protest, exh. 28, 2018 RFP.

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<sup>7</sup> The record does not inform whether any other firms submitted capability statements to DOL.

<sup>8</sup> Subsequent to the filing of CSD’s protests, DOL exercised its authority under CICA to proceed with performance of the contract despite the protests. AR, Tab 8, CICA Override Justification, at 1-8; see 31 U.S.C. § 3553(d)(3)(C)(i). In support of the CICA stay override, DOL’s head of contracting activity cited urgent and compelling circumstances, as well as the best interest to the government, and explained that it was “imperative that MTC’s bridge contract continue so as to avoid any gap in Government provided educational services.” AR, Tab 8, CICA Override Justification, at 4.

## DISCUSSION

CSD protests both the agency's cancellation of the 2013 solicitation and the sole-source contract awarded to MTC on January 31.<sup>9</sup> As explained below, we find no merit to CSD's challenges to the cancellation of the 2013 solicitation, and we sustain, on a limited basis, the protester's objection to MTC's sole-source contract.

### Challenge to Cancellation of Solicitation

First, we address CSD's objection to DOL's cancellation of the February 2013 RFP for the operation of the Clements JCC. CSD argues that the agency had no reasonable basis to cancel the solicitation, and that the cancellation was pretextual and the result of the agency's failure to plan.

In a negotiated procurement, such as this one, an agency has broad authority to decide whether to cancel a solicitation, and to do so, need only establish a reasonable basis. VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6. Thus, we have consistently explained that an agency need only establish a reasonable basis to support a decision to cancel a solicitation. See, e.g., AeroSage LLC, B-410648.2, B-410648.3, Mar. 20, 2015, 2015 CPD ¶ 111 at 3. A reasonable basis to cancel exists when, for example, an agency concludes that a solicitation does not accurately reflect its needs. WKF Friedman Enters., B-409892.2, Sept. 25, 2014, 2014 CPD ¶ 282 at 2.

However, where, as here, a protester has alleged that the agency's rationale for cancellation is but a pretext--that the agency's actual motivation is to avoid awarding a contract on a competitive basis or to avoid resolving a protest--we will closely examine the reasonableness of the agency's actions in canceling the acquisition. Inalab Consulting, Inc.; Solutions by Design II, LLC, B-413044 et al., Aug. 4, 2016, 2016 CPD ¶ 195 at 7. Notwithstanding such closer scrutiny, and even if it can be shown that pretext may have supplied at least part of the motivation to cancel the procurement, the reasonableness standard applicable to cancellation of a solicitation remains unchanged. See Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 4.

Here, contemporaneous with the decision to cancel the 2013 RFP, the contracting officer prepared a memorandum outlining the agency's rationales for the cancellation. See AR, Tab 9, RFP Cancellation Memo., at 1-7. The contracting officer--the fourth assigned to this procurement since the solicitation was issued--first outlined the

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<sup>9</sup> As the awardee of the sole-source contract at issue, MTC was permitted to intervene in CSD's protest challenging that contract. However, given that DOL had canceled the 2013 RFP and terminated the 2017 contract with MTC, our Office denied MTC's request to intervene in CSD's protest challenging the solicitation cancellation. We concluded that the firm was no longer an awardee and could not establish that it had a "substantial prospect of receiving an award"; as such, it did not qualify as an intervenor under our Regulations. See 4 C.F.R. § 21.0(b)(1).

procurement history, which, as described above, included several proposal evaluations, three award determinations, and multiple protests. Id. at 2-5. Then, the contracting officer explained the four primary reasons that canceling the solicitation was warranted.

The first significant rationale was that the 2013 RFP no longer reflected the agency's needs at the Clements center. By way of example, the contracting officer highlighted that some of the required personnel positions identified in the RFP, in fact, no longer exist at the center. Id. at 6. The memorandum explained that DOL "should not be in the position of requiring offerors to propose positions that are not in a functional mode at the present time," as was the case under the status quo ante. Id. Moreover, according to the contracting officer, this disconnect led to "recent difficulties" that offerors experience in proposing key personnel in their proposal revisions. Id.

In addition, the contracting officer noted that the 2013 RFP did not reflect the requirements of the Job Corps' governing statute, the Workplace Innovation and Opportunity Act (WIOA), Pub. L. No. 113-128 (2014). Id. In this respect, because the solicitation was issued prior to the enactment of WIOA, it "avoided WIOA compliance." Id. For example, the 2014 law contains new criteria that DOL is to consider in selecting its center operators. Id., citing Pub. L. No. 113-128, § 147, 128 Stat. 1425, 1542, codified at 29 U.S.C. § 3197. The contracting officer explained that canceling the solicitation and restarting the acquisition would enable DOL to include all WIOA requirements and considerations in the new solicitation. Id.

A third rationale cited by the agency in support of canceling the solicitation is that the proposals have become "stale." Id. As the memorandum points out, the eight proposals have undergone several revisions since they were first submitted in June 2013. Id. At this juncture, the proposals have expired. Id. at 1. In addition, the contracting officer argued that it is "highly likely" that personnel originally proposed to fill positions are no longer available. Id. at 6.

Lastly, the contracting officer noted that the more than 5-year old RFP "may be full of inconsistencies or ambiguities." Id. In this respect, the contracting officer explained that DOL amended the solicitation many times as the agency progressed through rounds of corrective action following protests. Id. The contracting officer specifically highlighted "confusion of all the offerors" on how to respond to the personnel requirements during the latest proposal revisions. Id. Similarly, the contracting officer further emphasized that the evaluation record had become "highly confusing--and at times, inconsistent" due to the numerous contracting officials and evaluators that had been involved in reviewing proposals throughout the multiple rounds of corrective action. Id. at 7.

Based on the rationales advanced in the contracting officer's memorandum, we find DOL's cancellation of the 2013 Clements solicitation to be justified, reasonable, and supported by the record. In our view, the agency advanced four compelling grounds to support its decision. While CSD disagrees with the agency's rationales--it argues that the memorandum is "vague and thin on detail"--it has not demonstrated that the

rationales are unreasonable or unsupported. Comments (B-411346.11, B-411346.12) at 9.

For instance, CSD objects to DOL's focus on compliance with WIOA, contending that WIOA is "simply a makeweight for DOL's cancellation case." Supp. Protest (B-411346.12) at 8. In response, DOL reiterates that WIOA was "Congress' first new look at Job Corps procurement in almost 26 years," and explains that the law contains several new provisions, and revisions to old provisions, that warrant inclusion in a new Clements solicitation. MOL/COS (B-4133146.11, B-411346.12) at 8. The agency specifically identifies several of these provisions, which range from new or changed evaluation considerations to changes to DOL's ability to exercise contract options. See id. The agency also expresses concern that if it were to award a 5-year contract to operate Clements in 2018 under the pre-WIOA terms of the 2013 solicitation, that would result in the Clements JCC contract not being in compliance with WIOA through 2023. Id. at 9. As DOL points out, it is unlikely that the Job Corps and Congress anticipated that changes from a 2014 law would still not be implemented in a Job Corps procurement in 2023. Id. Based on our consideration of DOL's interpretation of, and impact of, WIOA, we cannot conclude that the agency's concerns are unsupported or insufficient to support a new acquisition approach.

Lastly, we disagree with CSD that the agency's actions here were a pretext to avoid awarding a contract on a competitive basis or to contend with CSD's protests. Indeed, nothing in the record supports this accusation. In this respect, as elaborated above, the agency has attempted to award a contract on a competitive basis to operate Clements since 2015. The record confirms that this remains the agency's goal. See AR, Tab 9, RFP Cancellation Memo., at 7 (outlining the agency's plan to conduct a full and open competitive acquisition). Significantly, as highlighted above, DOL already issued its new solicitation on a full and open basis on April 10. Protest, exh. 28, 2018 RFP. CSD is not precluded from competing under the new solicitation. Thus, any frustration felt by CSD as a result of the cancellation of the 2013 solicitation is blunted by DOL's prompt issuance of the 2018 RFP. In addition, while the cancellation was prompted by CSD's bid protests, the agency has established reasonable bases to support its decision to cancel the solicitation such that the cancellation was not pretextual. See VIRE Consulting, Inc., B-408148.2, Nov. 26, 2013, 2013 CPD ¶ 272 at 3 (finding cancellation of solicitation following corrective action to be reasonable where the solicitation no longer reflected the agency's needs).

On the record here, we find unobjectionable the contracting officer's desire to "start fresh with a clear solicitation, based on current legal requirements and current needs, that unambiguously sets forth what the offerors need to do." See AR, Tab 9, RFP Cancellation Memo., at 1-7. Consequently, we deny this aspect of CSD's protests.

#### Challenge to Sole-Source Contract

Next, we turn to CSD's protest of the sole-source contract to MTC. CSD argues that the J&A supporting the sole-source contract is deficient because DOL failed to consider

CSD's capability to perform the contract. The protester further asserts that the contract is improper because it is the result of a lack of advance procurement planning. As discussed below, we sustain CSD's protest because DOL failed to meaningfully consider whether CSD, or any other offeror, could perform the services in concluding that MTC was the only responsible source available to satisfy the agency's needs.

While the overriding mandate of CICA is for full and open competition in government procurements, 41 U.S.C. § 3301(a)(1), CICA does permit noncompetitive acquisitions in specified circumstances, such as when the services needed are available from only one responsible source. 41 U.S.C. § 3304(a)(1). When an agency uses noncompetitive procedures under 41 U.S.C. § 3304(a)(1), it is required to execute a written J&A with sufficient facts and rationale to support the use of the cited authority, as well as publish a synopsis of the proposed sole-source procurement on FBO to provide potential competitors the opportunity to challenge the agency's intent to procure without full and open competition. See 41 U.S.C. § 3304(e); FAR §§ 6.302-1(d)(1), 6.303, 6.304. As relevant here, an agency invoking the "only one responsible source" exception to competition must provide prospective alternative sources a meaningful opportunity to demonstrate their ability to provide what the agency seeks to procure. See M.D. Thompson Consulting, LLC; PMTech, Inc., B-297616, B-297616.2, Feb. 14, 2006, 2006 CPD ¶ 41 at 4.

Our Office will closely scrutinize sole-source procurements conducted under the exceptions to full and open competition authorized by 41 U.S.C. § 3304, with our review focusing on the adequacy of the rationale and conclusions set forth in the J&A. See Sabreliner Corp., B-288030, B-288030.2, Sept. 13, 2001, 2001 CPD ¶ 170 at 5.

At the outset, we note that the agency's position that it requires uninterrupted operation of the Clements JCC cannot reasonably be questioned. The J&A, and the agency's response to CSD's protest, detail the significant disruption that would occur if services at the JCC were interrupted. For instance, the J&A highlighted that any interruption in services could result in the temporary closing of the center and having to provide transportation for each student to return to their home or another JCC. AR, Tab 4, J&A, at 3. The J&A further stated, among other points, that "[s]tudents' academic and career technical training would be interrupted and irreparably affected while the student waits at home for the center to reopen, or works to establish trust and a good working relationship at another center." Id. In this respect, DOL maintains that shutting down the center would put "1000 children and young adults' wellbeing and safety at risk." MOL/COS (B-416021) at 3. We agree; the record credibly establishes DOL's need for uninterrupted operations of the Clements JCC.

Nevertheless, we sustain the protest because the record does not support that DOL considered CSD's capability statement in concluding that only MTC can operate the Clements JCC without any interruption of services. In this respect, as noted above, the agency published its notice of its intent to award the sole-source contract on January 30, inviting companies to submit a capability statement by February 7. Protest, exh. 16, FBO Special Notice, at 1-2. However, a day later, DOL's chief procurement

officer signed the J&A and DOL entered into the sole-source contract with MTC. AR, Tab 4, J&A, at 1-5; Tab 7, Bridge Contract, at 1. Significantly, the J&A incorrectly stated that notice of the intent to award the contract was not posted to the Federal Business Opportunities website.<sup>10</sup> AR, Tab 4, J&A, at 3. As highlighted above, the agency had, in fact, publicized its intent to award the sole-source contract and invited responsible offerors to submit capability statements, as required by FAR sections 5.207(c)(16)(ii) and 6.302-1(d)(2), and CSD submitted its capability statement prior to the submission deadline. See AR, Tab 6, CSD Capability Statement (2018), at 1-10. Outside of agency counsel's representation that DOL had the opportunity to reconsider its sole-source contract after receipt of CSD's capability statement, but "saw no valid reason to change its decision," nothing in the record supports that the agency meaningfully considered CSD's capabilities. See MOL/COS (B-416021) at 6.

In response to CSD's protest, the agency maintains that the invitation for firms to submit capability statements was a "mere formality" and that the consideration of CSD's capability statement was "actually irrelevant" to determining whether DOL's sole-source decision was reasonable. MOL/COS (B-416021) at 5. In this regard, DOL argues that it was "well aware that many contractors," including CSD, have the capability to operate the Clements JCC. Id. The agency's defense is unavailing.

Indeed, as the agency itself points out, the key consideration was not whether another company could operate the Clements JCC, but whether the firm would be able to "implement a transition immediately and without interruption." Id. at 6. Notwithstanding the agency's arguments, DOL may ultimately conclude that neither CSD or any other firm can satisfy this aspect of the agency's sole-source justification; however, without considering CSD's capability statement, it is unclear how the agency could assess the impact of any transition to CSD's performance. In this regard, CSD expressly addressed its "readiness to provide a rapid transition" in its capability statement. AR, Tab 6, CSD Capability Statement (2018), at Cover Letter. The protester described that it had a "transition plan in place including pre-identified staff, resources and systems to provide a rapid transition to meet contract timelines as indicated under [the] Special Notice. . . ." Id. at 1. The firm also represented that it is "one of the few contractors operating today that have been directly tasked with assuming center operations on short notice in a contingency situation," and the firm listed examples. Id. at 2-3. CSD also cited its status a holder of a DOL indefinite-delivery, indefinite-quantity JCC Operations Contingency Contract, which, according to CSD, requires a "rapid transition response in as little as five (5) days."<sup>11</sup> Id. at 2.

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<sup>10</sup> The J&A also stated that no sources had expressed an interest in the acquisition. AR, Tab 4, J&A, at 4. Of course, such representation was misleading given that responses to DOL's special notice were not due for another 7 days (Feb. 7) at the time the J&A was executed (Jan. 31). See Protest, exh. 16, FBO Special Notice, at 1.

<sup>11</sup> Notably, the intended purpose of these contingency contracts is to "provide the Government with a rapid replacement mechanism that will give the Government a viable alternative for uninterrupted operation of a Job Corps center in the event that it is not in  
(continued...)

In our view, DOL's failure to meaningfully assess CSD's, or any other offeror's, ability to operate the Clements JCC with minimal disruption renders unreasonable the conclusions on which the J&A is based. Consequently, the sole-source contract is improperly justified. See Barnes Aerospace Group, B-298864, B-298864.2, Dec. 26, 2006, 2006 CPD ¶ 204 at 7 (sustaining protest of 2-year sole-source contract where agency failed to consider whether protester was a viable source for the repair services at issue).

When an agency uses the sole-source authority provided at FAR section 6.302-1, such as here, the agency must provide an opportunity for all responsible sources to submit capability statements (or proposals or quotations), "which shall be considered by the agency." FAR § 5.207(c)(16)(ii). Indeed, the FAR clearly contemplates that any "capability statements must have been considered" as a prerequisite to invoking the exception to competition.<sup>12</sup> FAR § 6.302-1(d)(2); see M.D. Thompson Consulting, LLC; PMTech, Inc., supra, at 5 n.6. As we have stated in the past, agencies undercut their credibility when they prepare and execute sole-source J&As on the basis that there is only one responsible source available, before the time they have received expressions of interest and capability from potential offerors, such as the situation here. See Barnes Aerospace Group, supra. The entire purpose of issuing notices seeking expressions of interest and capability is to avoid the need for such sole-source procurements, if possible. Id. at 7-8; see also Information Ventures, Inc., B-293541, Apr. 9, 2004, 2004 CPD ¶ 81 at 4 (explaining that the fundamental purpose of the required notices is to enhance the possibility of competition).

Thus, the agency's failure to meaningfully consider CSD's capability statement is not a "mere formality." See MOL/COS (B-416021) at 5. Rather, the agency's actions in awarding the noncompetitive contract to MTC are contrary to regulation, rendering the J&A, and the resulting sole-source contract, deficient. In addition, given that DOL could ultimately determine that CSD should be considered for the award of the short-term contract at issue, we find that the protester has demonstrated competitive prejudice. See Glacier Tech. Solutions, LLC, B-412990.2, Oct. 17, 2016, 2016 CPD ¶ 311 at 12 (explaining that competitive prejudice is an essential element of a viable protest).

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(...continued)

the Government's best interest to continue performance under existing conditions." Protest, exh. 20, Contingency Contract, at 8. The J&A makes no mention of this suite of contracts.

<sup>12</sup> We note, on the other hand, that the sole-source authority based on unusual and compelling urgency does not require the consideration of capability statements. See 41 U.S.C. § 3304(a)(2); FAR § 6.302-2; see also 41 U.S.C. § 1708(b)(2)(A) (procurement notice requirements do not apply to contracts awarded on the basis of unusual and compelling urgency). The agency may want to consider whether its need to maintain the status quo at the Clements JCC falls under this exception to competition.

As a last matter, for the record, we disagree with CSD that the sole-source contract to MTC was the result of a lack of advanced procurement planning on the part of DOL. See Protest (B-416021) at 13. We note that the requirement for advance planning, see 41 U.S.C. § 3304(e)(5)(A)(i), does not mean that such planning must be entirely successful or completely error-free, but, as with all actions taken by an agency, the advance planning must be reasonable. Camden Shipping Corp., B-406171, B-406323, Feb. 27, 2012, 2012 CPD ¶ 76 at 8. As described above, the record evidences that the agency has consistently tried to use the competitive process to award a long-term contract for the operations of the Clements JCC. Indeed, DOL has awarded a contract, or affirmed contract award, on three occasions since 2015.<sup>13</sup>

Given that the delays in awarding the long-term contract are due primarily to the agency's implementation of corrective actions, we do not consider the sole-source contract at issue here to be the result of a lack of advanced planning. See Systems Integration & Mgmt., Inc., B-402785.2, Aug. 10, 2010, 2010 CPD ¶ 207 at 3 (denying argument that noncompetitive task order was the result of a lack of advanced planning where the need for the 3-month task order was due to the agency's implementation of corrective action); cf. Techno-Sciences, Inc., B-257686, B-257686.2, Oct. 31, 1994, 94-2, CPD ¶ 164 at 11 (sustaining protest where sole-source contract extension was the result of agency's failure to plan for a competition for the follow-on requirement).

## RECOMMENDATION

During the course of this protest, DOL notified our Office and the protester that the agency had decided to override the CICA stay and proceed with contract performance. See, supra, at 4 n.8; see also AR, Tab 8, CICA Override Justification, at 1-8. In light of this determination, we recommend that DOL, as promptly as practicable, assess CSD's ability to perform the contract. Only after reviewing CSD's response to the January 29 special notice--and any others received by the agency--should DOL consider whether it has a legal basis for its sole-source contract with MTC. If DOL concludes that it does not have a basis for a sole-source contract under the authority relied on (FAR section 6.302-1), DOL should acquire these services on a competitive basis or consider whether its requirement falls under other exceptions to full and open competition.

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<sup>13</sup> Our Office recognizes that the agency has been trying to complete a competitive procurement for the operation of the Clements JCC since the issuance of the 2013 RFP. Nevertheless, we share CSD's concern that MTC's incumbency has been extended on a sole-source basis for more than 5 years. Under CICA, contracting officers have a duty to promote and provide for competition and to provide the most advantageous contract for the government. VSE Corp; Johnson Controls World Servs., Inc., B-290452.3 et al., May 23, 2005, 2005 CPD ¶ 103 at 8. In doing so, contracting officials must act affirmatively to obtain and safeguard competition; they cannot take a passive approach and remain in a noncompetitive position where they could reasonably take steps to enhance competition. See Signal & Sys., Inc., B-288107, Sept. 21, 2001, 2001 CPD ¶ 168 at 14-15.

We also recommend that DOL reimburse CSD the reasonable costs associated with filing and pursuing its protests challenging the sole-source contract, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claims for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is denied in part and sustained in part.

Thomas H. Armstrong  
General Counsel