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## Decision

**Matter of:** Raytheon Company-Integrated Defense Systems

**File:** B-400610; B-400618; B-400619

**Date:** December 22, 2008

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### DIGEST

Sole-source awards of follow-on contracts for the continued development of a sophisticated weapon system are unobjectionable where the agency reasonably determined that award to any other source would be likely to cause unacceptable delays in fulfilling the agency's requirements.

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### DECISION

Raytheon Company-Integrated Defense Systems (Raytheon IDS) of Tewksbury, Massachusetts, protests the decision to award three sole-source contracts to Lockheed Martin Maritime Systems and Sensors (LM MS2) of Moorestown, New Jersey, under solicitation Nos. N00024-08-R-5110 (5110), N00024-08-R-5121 (5121), and N00024-08-R-5123 (5123), issued by the Department of the Navy, Naval Sea Systems Command (NAVSEA), for portions of the Aegis Modernization (AMOD) program. Raytheon IDS contends that the Navy has not adequately justified the award of the sole-source contracts to LM MS2.

We deny the protests.

## BACKGROUND

The Aegis Combat System (ACS), deployed on 81 cruisers and destroyers within the U.S. fleet, is described as the shield of the Navy, defending against attacks from the air, via missiles or aircraft. The Aegis Weapon System (AWS), the automated portion of the ACS, has two functions: anti-air-warfare (AAW), protection against inbound aircraft and missiles; and ballistic missile defense (BMD), protection against ballistic missiles. The system receives and interprets radar signals to detect potential threats, identify the threats, and, if necessary, target the threats. The speed at which AWS must perform these tasks--measured in milliseconds and microseconds--is a critical requirement.

The Navy began development of the Aegis system in the early 1970's; LM MS2 and its predecessor companies have been the contractors since the program's inception. Because of the lack of appropriate commercially available software or hardware, Aegis was developed on now-outdated, Navy-specific computers using millions of lines of software code tailored to the capabilities of the hardware. The characteristics of the legacy Aegis architecture precluded the Navy from taking advantage of commercial-off-the-shelf (COTS) computing technology and limited the maintenance of, and improvements to, the Aegis system to LM MS2, the one entity with knowledge of the existing system.

On May 16, 2008, the Navy published presolicitation notices for each of the three solicitations at issue here: 5110, the hardware procurement;<sup>1</sup> 5121, the Platform

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<sup>1</sup> This solicitation includes various hardware components, including the BMD portion of the Aegis system. Components of that system have not yet begun the transition from the Navy-specific legacy hardware to COTS hardware, and the process of decoupling the software from the hardware and modularizing these software applications has not begun. The BMD portion of the system will be upgraded as the transition is performed; the compressed delivery schedule will require development and production to be performed concurrently. The signal processor is that part of the system which separates targets from "clutter." Development of the next generation of the Aegis signal processor, the Multi-Mission Signal Processor (MMSP), already underway, continues under this solicitation. The MMSP will combine and replace the AAW and BMD signal processors, giving ships equipped with the MMSP the ability to defend against relatively low altitude threats, such as cruise missiles, and high altitude ballistic missiles. Again, as with the BMD upgrade, development and production of the initial MMSP sets will be performed concurrently. The balance of the Aegis hardware must also be upgraded and repackaged, and the design for this hardware development effort is also included under this solicitation. Agency Report (AR), Tab 19 at 2.

Systems Engineering Agent (PSEA) procurement;<sup>2</sup> and 5123, the AMOD procurement.<sup>3</sup> Under 5123, the contractor will develop the following four functions, which will then be integrated into Aegis under 5121: the new Navy missile, the standard missile number 6; a new fire control capability, Navy integrated fire control-counter air (NIFC-CA), that provides for over-the-horizon targeting of missiles based on information from other ships or aircraft; Aegis BMD capability; and the single integrated air picture (SIAP), which will allow U.S. military service personnel and allies to share a single, graphical representation of the battle space. The integration will require the contractor to evolve six million lines of the Aegis weapons system code. Tr. at 90.

According to the Navy, the solicitations were designed to further a transformation that will create an open and objective architecture that will enable the Navy to take advantage of COTS computing technology and to create a more open system that allows for other software developers to compete for future maintenance and development contracts. That transformation will require exchanging the legacy hardware for COTS hardware, modifying the software to work with the COTS hardware environment, breaking millions of lines of legacy code into discrete components, and modifying those discrete software components to coincide with the OA model.

The Navy schedules Aegis upgrades<sup>4</sup> to be performed while ships are in dry dock for other routine refurbishment of the hull, mechanical and electrical systems. For example, the DDG 53, a guided missile destroyer, will leave service for its only major mid-life overhaul in 2012. If ACB 12<sup>5</sup> is not ready for installation during the DDG 53's

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<sup>2</sup> The PSEA will provide engineering assistance in the integration and testing of the new hardware and software. Included in this procurement is computer programming and other support for Aegis ships that incorporate various baselines of the Aegis system. AR at 2.

<sup>3</sup> The AMOD effort includes the establishment of modular architecture at the component level, with well-documented interfaces so that the government has control of the architecture as it moves towards an open architecture (OA) model. Tr. at 306-08.

<sup>4</sup> The biannual upgrades, called advanced capability builds (ACB), are denoted by the year in which they are begun. ACB 12 is scheduled for installation in 2012. It is this process of outfitting ships with the latest software and hardware advances available at the time of their overhauls, an evolutionary development process, that results in the multiple Aegis software and hardware baselines.

<sup>5</sup> ACB 12 includes the development and integration of the four noted functions and the documentation of the existing architecture at the conclusion of the integration effort. Agency's Post-Hearing Comments at 4.

availability, that vessel will face combat system obsolescence and the prospect of early retirement. AR at 35-36. The parties recognize that the Navy's solicitation deadlines are driven by the ship overhaul schedule and that the given completion dates are critical to the Navy's defense capabilities and are within its discretion to establish.

On June 19, 2008, Raytheon IDS submitted formal statements of interest and capability in response to each presolicitation notice. Those statements provided a detailed discussion of Raytheon IDS' experience on projects the protester deemed relevant. AR, Letters from the Protester to the Agency, June 19, 2008, Tabs 3, 9 & 15. The Navy replied to each of Raytheon IDS' statements of interest; in three separate letters to Raytheon IDS, the agency asked the protester to address a total of 14 critical factors; several factors for solicitations 5121 and 5123 overlapped. The Navy also supplied a schedule of dates corresponding to required contract milestones or deliverables. The Navy reiterated its intent to award the contracts to LM MS2 on a sole-source basis and directed Raytheon IDS to explain, in writing, how it could meet the Navy's requirements in accordance with the strict schedule constraints described in the letters, without substantial duplication of costs. Raytheon IDS' brief replies of July 15 restated the protester's intent to successfully perform the contracts through a "National Team approach," with LM MS2 listed as the first of three leading defense companies included in that effort.<sup>6</sup>

In early September, the agency issued justification and approval (J&A)<sup>7</sup> documents that concluded that sole-source awards to LM MS2 were justified under 10 U.S.C. § 2304(c)(1) (2000), which authorizes the use of other than competitive procedures when the property or services needed by the agency are available from only one responsible source, or from a limited number of responsible sources, and no other type of property or services will satisfy the agency's needs. As relevant here, for purposes of applying that provision, 10 U.S.C. § 2304(d)(1)(B) provides as follows:

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<sup>6</sup> In a hearing GAO convened in this protest, the Navy's Program Executive Officer for Integrated Warfare Systems (PEO IWS) stated that representatives for LM MS2 and General Dynamics had indicated to him that they would not be interested in joining such a national team. Tr. at 261. The protester has not challenged the PEO IWS' assertion. The only other contractor specifically mentioned by Raytheon IDS is Grumman Electronic Systems. AR, Tab 5, Letter from Raytheon IDS to NAVSEA.

<sup>7</sup> The Navy will use multiple contract actions to procure the 5110 hardware; a class justification and approval (CJ&A), issued for this solicitation, is appropriate in such circumstances. See FAR § 6.303-1(c). We will refer to this CJ&A, but, for simplicity, when discussing all three solicitations, we will refer to the J&A documents collectively as the three J&As.

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.

Specifically, for the 5110 hardware procurement, the agency argued that the specification and configuration upgrades are currently being performed by LM MS2. 5110 CJ&A at 3. "Due to the complexity of the AWS," the Navy stated, "a contractor must have intimate knowledge of all system requirements, weapon specifications, equipment design, and interfaces in order to produce, field, and test production units initially, prior to validation of production designs." Id. The agency further stated that it will not obtain a level III technical data package (TDP) sufficient to conduct a competitive procurement in time to meet these requirements. The agency estimated that development of another source would result in a delay of 2 to 3 years in contract performance. Id. at 4.

The J&As for the other two procurements are similar to the first. To justify the decision to proceed sole-source with 5121, the PSEA solicitation, the agency noted that the ongoing, concurrent hardware and software upgrades mean that the TDP and government-purpose software licenses needed to support a competitive procurement are not available. 5121 J&A at 3. Without the benefit of the TDP and those licenses, the agency considers it likely that acquiring the services from some other source would result in unacceptable delays in meeting the government's requirements, because to integrate the new elements of AMOD, another contractor would need time to gain a working knowledge of AWS software or to obtain direct assistance from LM MS2. Id. at 4. Moreover, the PSEA contractor must have an in-depth knowledge of AWS software development and the various Aegis baselines in order to apply appropriate changes across the fleet.

Similarly, the Navy maintains that without the TDP and government-purpose software licenses needed to support the 5123 AMOD procurement, it is likely that acquiring those services from any other source would result in unacceptable delays, in part because LM MS2 is the only source with extensive experience in the development of each of the war-fighting capabilities that will be incorporated in ACB 12. 5123 J&A at 3. To perform either one or both of these requirements, the Navy estimates that a new contractor would require 18 to 24 months from contract award to hire experienced staff and develop equivalent capabilities, re-engineering skills,

and technical understanding of the AWS.<sup>8</sup> 5121 J&A at 4, 5123 J&A at 3. The first solicitation addresses the agency's requirements through 2013; the other two procurements are 1-year contracts with three 1-year options that could extend the contracts through FY 2012.

On September 11 and 16, the agency notified Raytheon IDS of its intent to proceed sole-source, and these protests followed.

## DISCUSSION

### Reasonableness of the Navy's Sole-Source Determinations

When an agency uses noncompetitive procedures, it must execute a J&A with sufficient facts and explanation to support the use of the specific authority. See 10 U.S.C. § 2304(f). Our review of an agency's decision to conduct a sole-source procurement focuses on the adequacy of the rationale and conclusions set forth in the J&A. When the J&A sets forth reasonable justifications for the agency's actions, we will not object to the award. Turbo Mechanical, Inc., B-231807, Sept. 29, 1988, 88-2 CPD ¶ 299 at 3-4. The protester's disagreement with the agency's rationale does not provide a basis to sustain the protest; rather, the protester must show that the agency's position is unreasonable. Allied-Signal Inc., B-247272, May 21, 1992, 92-1 CPD ¶ 461 at 10.

As stated above, the statutory exception relied on here is 10 U.S.C. § 2304(c)(1). Specifically, the agency asserts that it reasonably determined that only LM MS2 could successfully perform the 5110 hardware contract, and that only LM MS2 could successfully develop and integrate the four new Aegis functions that are the subject of solicitations 5121 and 5123. The sole-source procurements are unobjectionable if the Navy reasonably found that award to any source other than LM MS2 would likely result in either substantial duplication of cost to the government that is not expected to be recovered through competition, or unacceptable delays in fulfilling the agency's requirements. 10 U.S.C. § 2304(d)(1)(B); FAR §§ 6.302-1(a)(2)(ii), (iii). Because either basis is sufficient and, as discussed below, we find that the Navy reasonably determined that acquisition from Raytheon IDS (or any source other than LM MS2) would likely cause unacceptable delays, we will not address the question of duplication of costs. Magnavox Elec. Sys., Co., B-258076.2, B-258076.3, Dec. 30, 1994, 94-2 CPD ¶ 266 at 7.

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<sup>8</sup> The J&As contain no estimate of the length of delay that conducting a procurement might cause. While we focus on the reasonableness of the rationale supplied in the J&As, we note that Raytheon IDS estimates that delay at 4-6 months, Tr. at 118, while the Navy's conservative estimate is 12-15 months. Tr. at 256.

In certain circumstances, it is reasonable for an agency to determine that overall knowledge of all of the critical components of a system is essential. Kearfott Guidance & Navigation Corp., B-292895.2, May 25, 2004, 2004 CPD ¶ 123 at 6. In procurements where the agency lacks a complete data package, a contractor's familiarity with the work to be performed may justify a limited competition, because award to a firm that lacks that experience may result in unacceptable delay in fulfilling the agency's requirements. Univox Cal., Inc. et al., B-225449.2 et al., Dec. 9, 1987, 87-2 CPD ¶ 569 at 8-9. This is the case when hands-on experience is needed to augment an existing, inadequate TDP in order for the contractor to meet the agency's needs within the time prescribed. Id.

Where an agency does not possess a TDP adequate for competition, the agency may procure its requirement on a sole-source basis from a contractor whose prior experience reduces the risk to the agency that its needs will not be timely met. Kollsman, A Div. of Sequa Corp.; Applied Data Tech., Inc., B-243113, B-243113.2, July 3, 1991, 91-2 CPD ¶ 18 at 8. This is so, even where, given less stringent deadlines, other contractors might as ably perform. Id. Where the protester is at a technical disadvantage to the proposed sole-source recipient, and the record shows that the protester could not remedy its technological deficit and meet the time frame established by the agency, we will not object to the proposed sole-source award. Id. at 9; Tri-Ex Tower Corp., B-239628, Sept. 17, 1990, 90-2 CPD ¶ 221 at 5. As discussed below, the record supports the agency's position that Raytheon IDS has not shown that it can perform these contracts without risk that the Navy's needs will not be timely met.

#### Solicitation 5110

Raytheon IDS argues that it has experience producing Aegis hardware, that the hardware being procured is modified COTS equipment, and that Raytheon IDS can successfully compete for this contract. The agency challenges the claim that the hardware being procured is COTS, Agency Post-Hearing Comments at 22-24, and maintains that without a validated TDP, the government incurs significant schedule risk when the manufacturer is not the original design agent, because the data available is not at a sufficient level of detail or maturity. Id. at 22-23. Indeed, the Navy maintains that even in circumstances where a manufacturer that is not the original design agent has a validated TDP to work from, the government often still incurs substantial additional schedule risk. Tr. at 147-48. The Navy further reports that, for this procurement, the contractor will be concurrently designing and constructing the hardware, which will magnify the complexity of the work and the risk to the Navy of any other contractor performing the work. 5110 CJ&A at 3. The agency also rejects Raytheon IDS' claim that concurrent development and production of hardware is a standard industry practice. Tr. at 29. The Navy conservatively estimates that award to a source other than LM MS2 would cause a delay of 2 to 3 years in the AMOD certification date of 2013. Agency Post-Hearing Comments at 24-25.

While the agency recognizes that Raytheon IDS has substantial experience building hardware, the Navy argues that, in nearly every circumstance the protester has offered to demonstrate its capabilities to perform this hardware production, the protester was the original design agent for the hardware and also the prime contractor for the production of the equipment. *Id.* at 23. Late in the record development, on December 1, Raytheon IDS identified two instances where it has performed build-to-print work<sup>9</sup> for the Aegis program. Protester's Post-Hearing Comments, Decl. of Raytheon IDS Director, Mission Systems Equipment, at 2. As an initial matter, we would not find unreasonable an agency's refusal to consider information produced this long after the submission of statements of interest, sent to the Navy on June 19, or the original protest, filed September 22. *See Litton Computer Servs.*, B-256225.4, B-256225.5, July 21, 1994, 94-2 CPD ¶ 36. Moreover, the Navy and the intervenor reasonably distinguish the work performed many years ago by Raytheon IDS as substantially different from the work required under solicitation 5110, not the least because, as has been noted, the contractor will not be building from detailed data packages for the 5110 hardware, whose development will be ongoing. *See Navy Memorandum*, Dec. 10, 2008, at 2-3; Intervenor's Supplemental Post-Hearing Comments at 2.

#### Solicitations 5121 and 5123

The agency argues that its decision to proceed sole-source with solicitations 5121 and 5123 was reasonably based on a determination that contracting with any other contractor, lacking a thorough, intimate knowledge of the legacy source code, would likely subject the agency to unacceptable delays. The code is very "fragile," as described by the Navy, and is made up of several different programming languages, and even multiple versions of some languages. *Tr.* at 173-76. Because of the way in which the code was developed, each separate new capability will affect multiple areas of the code. The agency maintains that elements--large blocks of software that perform such critical functions as detecting incoming missiles or launching appropriate weapons--and components/modules--the smaller blocks of software that combine to form an element--reflect years of acquired knowledge by LM MS2 and thousands of hours of software and engineering experience. Agency's Post-Hearing Comments at 17. Moreover, as reflected in the record, relationships between elements and components/modules are complex. For example, integrating the BMD capability, the Navy asserts, will affect the underlying software inside the SPY-1 element, the command and decision element, the weapon control system element, the Aegis display system element, and the Aegis combat training system element. *Id.* at 16-17. Integrating the new BMD capability will also require changes to the internal software in a number of critical legacy Aegis components/modules, including missile downlink, engage management, track services, weapon resource scheduler, track

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<sup>9</sup> "Build-to-print" is a term of art that refers to producing an item based on mature, proven, detailed data packages.



server, ID assign and BMD mission planner, among others. Id. The agency's determination is that only LM MS2 has the necessary knowledge of the larger elements and the smaller components/modules, and the "complicated design interdependencies" between them, to complete the contracts within the Navy's time constraints. Id. at 17.

The Navy also asserts that Raytheon IDS lacks specific Aegis-related experience with respect to S-band radars<sup>10</sup> and BMD systems, which is also critical to the successful completion of the integration effort. Id. at 29. Raytheon IDS concedes that it has no experience with S-band radars deployed in an Aegis system. Tr. at 258-59 ("[T]here is some record data that shows [Raytheon IDS does] understand a bit about how S-band works. Now, it may not be specific to the S-band in Aegis. . ."). Raytheon IDS asserts, however, that it can leverage its experience with X-band radars to successfully perform contracts involving S-band. Tr. at 239. The Navy also argues that Raytheon IDS has demonstrated significant experience in BMD, but not the BMD capability required by Aegis. Tr. at 22. Raytheon IDS concurs, and again states that it can leverage the experience that it does have to perform these solicitations. Protester's Post-Hearing Comments at 8. Raytheon IDS also concedes that it has never modified Aegis weapons system code to incorporate a new capability into Aegis. Tr. at 251.

Raytheon IDS argues that it will make up for its lack of prior code knowledge and experience through innovation, specifically a technique that it calls "wrapping" the code that eliminates the need to translate it on a line-by-line basis and would assist the protester in completing the contracts on time. The Navy argues that the process of wrapping the functional boxes, or components, is not a viable technical solution. According to the Navy, the successful accomplishment of ACB 12 requires the alteration of many lines of software within Aegis elements and components, as discussed above. "Wrapping code generally preserves the existing functionality within an element or component," the Navy argues, "but does not make the integration of new functionality into that element or component any easier and does not eliminate the need for detailed knowledge of the software inside the box." Agency's Post-Hearing Comments at 26.

Here, based on the record, the agency's determination that selection of a contractor that lacked specific, Aegis-related experience with critical weapons capabilities could subject the agency to unacceptable delays in performance of solicitations 5121 and 5123 was reasonable.<sup>11</sup>

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<sup>10</sup> S-band radars differ from X-band radars in the discrimination algorithms used to intercept targets. Tr. at 238.

<sup>11</sup> The protester states that maintenance of the various Aegis baselines may logically be the exclusive province of LM MS2, but asserts that it can perform the integration of at least some of the new functions. Protester's Post-Hearing Comments at 34.

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## Adequacy of the Navy's Description of Its Requirements

Raytheon IDS asserts that the Navy unreasonably failed to supply it with essential schedule and requirements information, and that the Navy's own estimate of its requirements has been subject to significant change throughout the protest record development. Protester's Post-Hearing Comments at 12. Raytheon IDS argues that because the agency did not adequately convey its requirements, either in the presolicitation notices and related communications with Raytheon IDS or during the protest, Raytheon IDS has been unduly hampered in its ability to demonstrate that it can meet the agency's requirements. We disagree.

The Navy's decision to proceed sole-source rested on its determination that only LM MS2 had the necessary experience to perform the contracts within the prescribed deadlines. The protester acknowledges that only LM MS2 has that experience; instead, Raytheon IDS challenges the Navy's determination that LM MS2's experience is necessary to meet the Navy's needs and, conversely, that Raytheon IDS' experience is insufficient to meet those needs.

During the course of the record development of this protest, the Navy shared with Raytheon IDS the information available to the agency concerning its requirements. Apparently, the entirety of Raytheon IDS' prior experience that was offered in support of its claimed ability to meet the agency's requirements is work performed for the Navy. It was clear throughout the hearing in this case that, while Raytheon IDS was attempting to cast its potentially relevant experience in the most favorable light, it was not describing any undertakings that were not already known to the Navy. *See, e.g.*, Tr. at 89-90 (Warfare Systems Engineer explaining the difference between ACS and AWS and finding misstatements in Raytheon IDS' description of its experience); Tr. at 222 (PEO IWS explaining the distinction between Raytheon IDS' efforts under the Zumwalt program and the requirements of the current solicitations); Tr. at 257 (PEO IWS pointing out that Raytheon IDS misidentified a particular weapon as using an S-band radar). It is clear on the record that the Navy made its determination to proceed with sole-source awards to LM MS2 with adequate knowledge of Raytheon IDS' claimed capabilities; no greater articulation by the Navy of its needs would have altered the outcome of this protest.

## Advance Planning

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Accordingly, these efforts should be "unbundled" to facilitate competition, Raytheon IDS claims. Because we find reasonable the Navy's determination that these efforts, separately, should be awarded sole-source, we need not consider this allegation further.

Award of a contract using other than competitive procedures may not be made where the shortage of time cited as the justification was the result of a lack of advance planning by contracting officials.<sup>12</sup> 10 U.S.C. § 2304(f)(5)(A). The record here confirms that the agency is actively planning for competition. One critical byproduct of the Navy's years-long effort to modernize Aegis software and hardware systems is the flexibility that the resulting OA will give the Navy to issue future solicitations competitively; the Navy describes the achievement of OA as important to the program's survival and success. Tr. at 178. As noted above, the J&As anticipate that by the end of the contract periods, the Navy will be well-positioned to offer significantly more opportunities for competitive procurements. See Tr. at 199ff, Statement of PEO IWS. Even now, the modernization effort has advanced sufficiently that the Navy has elected to procure the new common display system through full and open competition in late 2008. AR, Tab 31, Aegis Weapon System Acquisition Plan PEO IWS 1AQ-08-01, at 6. The Navy's current solicitations, rather than evincing a lack of advanced planning, are part of a long-range, well-vetted strategy with significant Congressional oversight. See AR, Tab 40, Senate Committee on Armed Services Report, May 12, 2008; Tab 41, Third Quarterly Report to Congress on Naval Open Architecture, Aug. 7, 2008. On the record here, we see no basis to conclude that the Navy's scheduling constraints are the product of a lack of advanced planning.

#### Future Competition

The protester argues that where an agency concedes that there may be opportunities for competition in future years, the agency may not presumptively wall off those future years from competition, pending some future review of potential competition. Protester's Comments on AR at 27. Raytheon IDS asserts that the Navy has done just

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<sup>12</sup> Raytheon IDS argues that the J&As are defective because they lack an explanation of all of the actions attempted by the Navy to make the acquisition competitive. Protester's Comments at 25. The protester does not assert any prejudice from the Navy's alleged failure to fully explain its attempts in the J&As, and we see none. Competitive prejudice is an essential element of a viable protest; where, as here, the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. M&M Investigations, B-299369.2, B-299369.3, Oct. 24, 2007, 2007 CPD ¶ 200 at 5 n.2. With respect to the underlying substantive issue, we discuss above whether the agency's need to award these contracts on a sole-source basis is the result of inadequate advance planning.

that, citing unspecified language in the J&As.<sup>13</sup> We will sustain a protest on this basis when, for example, the agency has ordered in excess of its needs, see Ricoh Corp., B-234655, July 5, 1989, 89-2 CPD ¶ 3, or where the record establishes that competition will exist in a reasonable and certain amount of time. See Precision Logistics, Inc., B-271429, July 18, 1996, 96-2 CPD ¶ 24 at 6 (sustaining challenge to agency's purchase of 18 months work of stock parts); Pacific Sky Supply, Inc., B-228049, Nov. 23, 1987, 87-2 CPD ¶ 504 at 5-6 (sustaining challenge to "broad scope" (\$2.5 billion) and "long term" (5 years) for replacement parts sole-source contract). These are not the facts of this protest. While the Navy itself seems to allow for the possibility that its projections regarding when competitive procurements can begin may have been too conservative—in which case the Navy will take steps to competitively procure its requirements sooner than expected—the record does not show that the Navy improperly extended the contract periods past the time at which competitive procurements should be feasible to meet the Navy's needs. As discussed, the Navy expects these contracts, at their conclusions, to enable the Navy to compete follow-on procurements. We see nothing unreasonable in the Navy's position.

The protester also asserts that the J&As improperly claim that "rapidly evolving technology means that these three procurements must lock out all competition," Protester's Comments on AR at 29, citing the requirement that J&As include an "[e]xplanation of why technical data packages. . . suitable for full and open competition have not been developed or are not available." FAR § 6.303-2(a)(9)(i). Raytheon IDS' restatement, above, of the J&As is inaccurate; it is not the rapidly changing nature of technology that precludes competition, but rather the complex, time-consuming and deliberate pace of the transition from the legacy system to an OA system. Regardless, the Navy had reasonably justified its lack of development of TDPs, and the record shows that the agency is implementing a plan that will produce the necessary data for competition.<sup>14</sup>

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<sup>13</sup> Raytheon IDS may be referring to 5110 J&A at 4 ("On a yearly basis, . . . the Navy will evaluate the government's ability to compete the MMSP production prior to the CJ&A expiration date."), and 5123 J&A at 5 ("As other upgrade requirements emerge and are funded, the [PEO IWS] will assess whether future competitions are feasible.").

<sup>14</sup> The protester argues that the procurements were improper because the decision to proceed sole-source was not made by the contracting officer, as required by CICA. See 10 U.S.C. § 2304(f)(1)(A). Raytheon IDS raised this issue in a letter to this Office filed December 1, or 10 days after the date of the hearing in this protest. While the protester stated that it would address the issue in more detail in the hearing comments due 2 days later, the later, more specific arguments cannot be considered unless they independently satisfy the timeliness requirements under our Bid Protest Regulations. See Foundation Eng'g Sciences, Inc., B-292834, B-292834.2, Dec. 12, 2003, 2003 CPD ¶ 229 at 6-7. Because the protester's initial, December 10 filing did not contain a detailed statement of the legal and factual grounds of this issue, the

(continued...)

The protests are denied.

Gary L. Kepplinger  
General Counsel

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protester has failed to state a valid basis of protest. See 4 C.F.R. § 21.1(c)(4) (2008). In any event, Raytheon IDS alleges that the PEO IWS told the president of Raytheon IDS some months ago that he had made the Navy's decision to proceed sole-source. Tr. at 194. Thus, a protest ground based on that conversation is untimely. See 4 C.F.R. § 21.2(a)(2).