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# Decision

**Matter of:** Summit Technologies, Inc.

**File:** B-419126; B-419126.2

**Date:** November 19, 2020

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Terry L. Elling, Esq., and Hillary J. Freund, Esq., Holland & Knight, LLP, for Ad Hoc Research Associates, LLC, the intervenor.  
Captain Richard W. Hagner, Department of the Army, for the agency.  
Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging agency's award of a sole-source contract using simplified acquisition procedures is denied where the record shows that the agency reasonably determined that there was only one source immediately available to meet the agency's urgent requirements for experimentation support services.

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## DECISION

Summit Technologies, Inc., a small business of Pensacola, Florida, protests the award of a sole-source contract to Ad Hoc Research Associates, LLC, a small business of Havre de Grace, Maryland, by the Department of the Army, pursuant to solicitation No. W91249-20-R-0044, for up to four months of experimentation support services at Fort Gordon, Georgia. The protester contends that there was no unusual and compelling urgency to justify the award to Ad Hoc. The protester further contends that the agency should have conducted a limited competition for its immediate requirements.

We deny the protest.

## BACKGROUND

On February 20, 2020, the Army issued a related request for proposals (RFP) No. W91249-20-R-0002, for the award of an indefinite-delivery, indefinite-quantity contract with performance consisting of a 1-year base period and four 1-year option periods for experimentation support services for the Cyber Battle Lab (CBL), Cyber Capabilities

Development Integration Directorate, Future Concepts Center, and United States Army Futures Command at Fort Gordon, Georgia. Protest at 3. On July 28, the Army awarded a contract under that solicitation to Ad Hoc with a period of performance beginning July 30 and ending July 29, 2025. *Id.* at 4; Agency Report (AR), Tab 13, Market Research at 2. On August 10, Summit filed a protest challenging the contract award to Ad Hoc.<sup>1</sup> *Id.* As a result of the protest, work on the contract was suspended. Contracting Officer's Statement at 1.

On August 14, the agency issued the solicitation that is the subject of this protest, RFP No. W91249-20-R-0044, directly to Ad Hoc seeking substantially the same services as the earlier solicitation but for a maximum of four months. *Id.* Ad Hoc submitted a proposal that same day. *Id.* On August 17, the agency instructed Ad Hoc to proceed with contract performance, and on August 28, final execution of contract W91249-20-C-0020 occurred. *Id.* Concurrently, the agency prepared and approved a sole-source justification and approval (J&A) document using Federal Acquisition Regulation (FAR) subpart 13.5 procedures for certain commercial items, citing unusual and compelling urgency. Agency Report (AR), Tab 12, J&A at 3. Specifically, the agency stated:

Mission readiness will be negatively affected if the Cyber Battle Lab Experimentation Support were to incur a "break" or loss of functionality. There is no other vendor available that can continue to provide uninterrupted support during this stay. This bridge will also allow critical contract support to continue to support the [DELETED] the Army has invested this year to conduct the annual Cyber Quest prototyping experimentation event. This event is critical to the Army because it provides the premier venue where key stakeholders, industry and academia have an opportunity to integrate approved Cyber, Electronic Warfare, and Signal technologies in an operational context at the Brigade Combat Team and below levels. The experiment requires a year of planning and testing that culminates in a month long event used to inform/validate concepts, capability requirements documents, Network-Cross Functional Team lines of effort and Army Modernization Priorities. If these support services are not allowed to continue under this bridge, then Cyber Quest [2020] will be canceled. Canceling this event will significantly impact the future of the Army's modernization priorities enabling a Multi-Domain Operational capable force. Funding already invested, not only on the contract labor workforce, but on the supporting

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<sup>1</sup> As a result of alternative dispute resolution conducted by our Office in that protest, the agency took corrective action and the protest was dismissed as academic. *Summit Technologies, Inc.*, B-418998, B-418998.2, Nov. 9, 2020 (unpublished decision).

force and organizations, operational integration, supplies, and travel will also be lost due to the cancelation of the event. [2]

*Id.* at 4.

In addition, the agency stated that the Battle Lab Collaborative Simulation Environment (BLCSE) within the CBL “provides network operations support for the environment that connects 23 sites across the United States Department of Defense with critical collaboration capabilities.” *Id.* The agency stated that loss of these services would impact multiple highly critical upcoming events, for example, “simulation exercises and table top exercises for the Maneuver Battle Lab, Fires Battle Lab, and Intel Battle Lab,” and “the 4th Quarter FY [fiscal year] 2020 Integrating Event (20-04) occurring 24-28 August 2020 with rehearsals beginning 18 August 2020 in support of the Futures Integration Division, Futures and Concepts Center.” *Id.* The agency further stated that continued services were required to maintain the risk management framework certification across all 23 sites. *Id.*

The agency indicated that the sole-source contract was to be performed for a 2-month base period beginning August 17, and, with two 1-month option periods, would end on December 16, with a maximum total value of \$3.2 million. *Id.* at 3. The J&A further explained that on August 10, the agency conducted market research on interested sources by validating the market research it previously conducted for the competitively awarded acquisition (RFP W91249-20-R-0002). *Id.* at 5-6. As part of its market research and as additional support of its decision to issue a sole-source contract, the J&A noted that the prior incumbent contract would expire on September 28. *Id.* at 6. The agency stated: “Since this effort is a stop-gap measure to ensure vital services continue during a stay period due to [a] protest, there is no benefit to the Government to re-compete the effort at this time. There is currently no other source that can provide the immediate capabilities necessary to meet the total requirements provided by the incumbent contractor.” *Id.* at 5.

On September 3, the Army posted the J&A document to beta.SAM.gov. This protest followed.

## DISCUSSION

The protester argues that the Army cannot demonstrate unusual and compelling urgency that would result in serious injury to the agency to justify the award of a sole-source contract. Protest at 5-7. The protester further contends that the agency failed to reasonably consider the conduct of a limited competition for the sole-source

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<sup>2</sup> On August 13, 2019, the agency posted a broad agency announcement seeking participants for the Cyber Quest 2020 event, then scheduled to occur from May 25 through June 19, 2020. AR, Tab 3, Cyber Quest 2020 Broad Agency Announcement.

requirements, and thus violated the FAR. *Id.* at 7-8. For the reasons that follow, we find no basis to sustain Summit's protest.<sup>3</sup>

When conducting a procurement utilizing simplified acquisition procedures, contracting officers must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the government. 41 U.S.C. § 3305(d); FAR 13.104; *Information Ventures, Inc.*, B-293541, Apr. 9, 2004, 2004 CPD ¶ 81 at 3. As an exception to the general competition requirement, a contracting officer may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source was reasonably available (*e.g.*, urgency, exclusive licensing agreements, brand-name or industrial mobilization). FAR 13.106-1(b)(1)(i). We review an agency's decision to limit competition under such circumstances for reasonableness. *Critical Process Filtration, Inc.*, B-400746 *et al.*, Jan. 22, 2009, 2009 CPD ¶ 25 at 5.

Here, on August 11, the day after Summit filed its earlier protest, the CBL requested contract coverage to "ensure there is no break in CBL's ability to conduct critical mission requirements." AR, Tab 6, Request for Bridge Contract at 1. Specifically, as noted, the CBL identified the contractor workforce as "vital" to the Cyber Quest 2020 event, as well as other events involving BLCSE participants, and for network operations support and information security controls across all 23 sites. *Id.* at 1-2. Further, at least one of the events cited by the CBL as requiring contractor support was scheduled to occur within one week of the start of performance of the sole-source award and prior to the agency's

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<sup>3</sup> Summit raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester's additional assertions and find that none provides a basis on which to sustain the protest. For example, Summit argues that the timeline of events in the underlying procurement indicates a lack of advance planning, and the urgency to meet the Cyber Quest 2020 schedule had nothing to do with Summit's protest but was the result of administrative inertia. Comments & Supp. Protest at 14. The agency argues that the need to award the sole-source contract to Ad Hoc did not arise until Summit filed its protest of the July 28 contract award to Ad Hoc, and performance of that contract was stayed. Supp. Memorandum of Law at 3-5.

Here, the record shows that the Cyber Quest 2020 event, initially scheduled to occur from May 25 to June 19, was postponed as a result of the COVID-19 pandemic. See AR, Tab 3, Cyber Quest 2020 Broad Agency Announcement at 2; AR, Tab 10, Impact of Contract Execution and COVID-19 to CQ20 Execution Course of Action Analysis. Thus, we find no basis to conclude that the need to award a sole-source contract to Ad Hoc was the result of a lack of advanced planning. *eAlliant, LLC*, B-407332.4, B-407332.7, Dec. 23, 2014, 2015 CPD ¶ 58 at 5 ("While an agency may not justify a noncompetitive award on the basis of urgency where the agency's requirements have become urgent as a result of a lack of advance planning, such planning need not be entirely error-free or successful.").

posting of the J&A--the "4th QTR FY2020 Integrating Event (20-04) 24-28 Aug 2020 with rehearsals beginning 18 Aug 2020." *Id.*

Insofar as the protester alleges that there were no urgent circumstances and the agency should have conducted a limited competition rather than issue a sole-source contract, the record demonstrates otherwise. Here, limited competition was not a viable option due to the short time frame in which the agency needed its requirements fulfilled. In this case, given the filing of Summit's August 10 protest and subsequent stay in performance of the contract competitively awarded to Ad Hoc, we find the agency's decision to limit competition was reasonable where the record shows the agency needed services to begin by at least August 18. Summit argues that "Cyber Quest 2020 was not that important of an Exercise," and that the balance of the services provided under the sole-source contract are not necessary for operational readiness. Comments & Supp. Protest at 2, 8-9. The protester's disagreement with the agency's judgments regarding its needs and how best to accommodate them, without more, is insufficient to show that the agency's judgment is unreasonable.<sup>4</sup> See *SSI Tech., Inc.*, B-417917, Dec. 4, 2019, 2019 CPD ¶ 418 at 7.

As a general rule, in a simplified acquisition, we will not object to a sole-source award unless it is shown that the agency acted without a reasonable basis. *Information Ventures, Inc.*, B-290785, Aug. 26, 2002, 2002 CPD ¶ 152 at 3. On this record, we find that the agency has demonstrated a reasonable basis for awarding a short term sole-source contract to Ad Hoc, to avoid a break in services after Summit filed its initial protest on August 10, and further find reasonable the agency's conclusion that it could not conduct a limited competition in time to satisfy its immediate requirements.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>4</sup> The protester also argues that the agency performed inadequate market research and ignored other viable options to meet its immediate requirements, such as using the prior incumbent contract, which was not due to expire until September 28, and could be extended by the exercise of the option to extend services clause pursuant to FAR 52.217-8, or the use of other existing contracts not held by Ad Hoc. See Comments & Supp. Protest at 11, 15-17. We find that the protester is not an interested party to argue that the agency failed to consider and/or utilize such alternatives since none would have provided Summit with the opportunity to fulfill the agency's requirements. See e.g., *EDWOSB Transformer Servs., LLC*, B-416683, Oct. 15, 2019, 2018 CPD ¶ 357 at 8-9 n.12 (protester not an interested party to argue that sole-source contract could have been awarded to a different firm).