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# Decision

**Matter of:** Empire Aircraft Services, Inc.

**File:** B-420425; B-420425.2

**Date:** March 29, 2022

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Brian A. Darst, Esq., for the protester.  
Lieutenant Colonel Keric Clanahan, and Erika Whelan Retta, Esq., Department of the Air Force, for the agency.  
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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 there was insufficient time to conduct even a limited competition to meet the agency's urgent requirements for aircraft wash and corrosion control services.

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## DECISION

Empire Aircraft Services, Inc. (Empire), a small business, of Summerville, South Carolina, protests the award of sole-source contract No. FA4497-22-P-0005 to Starlight Corporation, a small business, of Carlsbad, California, by the Department of the Air Force to provide aircraft wash and corrosion control services at Dover Air Force Base (AFB), Delaware. The protester contends that the sole-source award to Starlight is improper given that Empire is capable of performing the requirement.

We deny the protest.

## BACKGROUND

The relevant background to the protest here begins with the Air Force's issuance, on June 30, 2021, of a related request for proposals (RFP), No. FA4497-21-R-0014, for the award of a 5-year contract for tow, wash, de-paneling, lubrication, and cleaning services for C-5 and C-17 aircraft at Dover AFB. Agency Report (AR), Tab 1, Contracting

Officer's Statement (COS) at 4.<sup>1</sup> On October 1, the Air Force awarded a contract under that solicitation to Empire with performance beginning immediately. *Id.* at 5. Starlight, the incumbent contractor performing these services, subsequently filed a protest with our Office challenging the Air Force's evaluation and award to Empire. *Id.* at 6. As a result of the protest, the Air Force suspended performance of the contract on October 12. *Id.*

On October 21, the agency notified our Office that it would take corrective action by reevaluating all proposals received and making a new best-value determination. COS at 6. Our Office subsequently dismissed Starlight's protests as academic. *Starlight Corp.*, B-420267, B-420267.2, Oct. 21, 2021 (unpublished decision). Because Starlight's protest resulted in suspending performance by Empire, and because the preceding contract with Starlight ended on September 30, the Air Force elected to obtain scheduled corrosion control services at other locations or grant 60-day waivers delaying service of the aircraft while it implemented the corrective action.<sup>2</sup> COS at 4, 19; AR, Tab 37, CICA Stay Override Determination and Findings (D&F) at 6.

Upon completion of its corrective action, the agency again awarded the contract to Empire and on November 24, Empire resumed performance. COS at 6-7. Starlight protested the Air Force's reevaluation and re-award to Empire, and on December 7, the Air Force again suspended Empire's contract performance. *Id.* at 7; *Starlight Corp.*, B-420267.3, B-420267.4, Mar. 14, 2022, 2022 CPD ¶ 65 (the *Starlight II* protest).

The agency sought to obtain services through an interim or "bridge" contract to Starlight. COS at 7. On Friday, December 10, the agency issued the solicitation that is the subject of this protest, RFP No. FA4497-22-PCCC, directly to Starlight seeking substantially the same services as the prior solicitation but for a base period of six months with two 3-month option periods. *Id.* at 10; AR, Tab 27, Bridge RFP at 1. Starlight submitted its proposal on Monday, December 13. COS at 10. The Air Force awarded the interim contract to Starlight on December 14 and performance began on December 15. AR, Tab 32, Bridge Contract at 1, 8.

Concurrently, on December 10, the agency documented its sole-source justification pursuant to Air Force Federal Acquisition Regulation Supplement subpart 5313.5, Simplified Procedures for Certain Commercial Items, and 10 U.S.C. § 2302b, which authorizes the use of simplified acquisition procedures for Department of Defense

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<sup>1</sup> Citations to the record are to the pages of the Adobe PDF documents produced in the agency report.

<sup>2</sup> Under the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, (CICA), if the procuring agency receives notice of a protest filed at this Office within 10 calendar days of the contract award, or 5 calendar days after the debriefing date, the agency generally is required to suspend contract performance while the protest is pending (commonly referred to as a "CICA stay"). 31 U.S.C. § 3553(d)(3)(A), (d)(4); *see also* Federal Acquisition Regulation (FAR) 33.104(c)(1).

acquisitions. AR, Tab 26, Justification and Approval (J&A) at 1. The agency cited unusual and compelling urgency as the basis for award of a sole-source contract and asserted that the services should be acquired from Starlight, the incumbent contractor. *Id.* at 2. The Air Force explained as follows:

Not having Aircraft Corrosion Control services at Dover AFB would significantly affect the National Security interests of the United States if we are required to ground these aircraft. Corrosion Control services are critical to the maintenance and safety of the C-17 and C-5 fleets at Dover Air Force Base supporting 20% of the Nation's Strategic Airlift. Two aircraft (1 [each] C-17 and 1 [each] C-5) require Corrosion Control services through 10 January 2021, one of which are scheduled for 11 - 12 December 2021. These aircraft cannot fly without having scheduled Corrosion Control unless waived by [Air Force Materiel Command (AFMC)]. . . . If the Corrosion Control is not waived and not performed, the aircraft would be grounded. . . .

*Id.* The Air Force also stated that the cost for government personnel to provide the services or to continue to schedule services at other bases “would cause significant harm to the [g]overnment.” *Id.* at 3.

The J&A summarized the market research the agency conducted in connection with the earlier related RFP. *Id.* at 3. The J&A identified Starlight, the incumbent contractor, as a potential source and indicated that “[d]ue to this being a bridge action while the protest is being processed, this effort will not be competed.” *Id.* The J&A further indicated that no sources expressed, in writing, an interest in the acquisition. *Id.* at 4.

As the agency worked to execute the sole-source contract with Starlight, Empire attempted to contact the contracting officer to discuss the suspension of its contract and confirm whether an interim contract would be awarded to Starlight. Comments exh. 1, Decl. of Empire’s President; Comments exh. 2, Email Correspondence Between Empire’s Counsel and the Air Force. In this regard, both Empire’s president and its outside counsel contacted the Air Force via telephone and email numerous times between December 8 and 15 for information about a rumored bridge contract between the Air Force and Starlight. Comments exh. 1, Decl. of Empire’s President at 5-7, 31, 33, 36; Comments exh. 2, Email Correspondence Between Empire’s Counsel and the Air Force at 2-3. The Air Force provided no information to Empire until December 16, at which time the Air Force confirmed that a sole-source award had been made to Starlight. Comments exh. 1, Decl. of Empire’s President at 7; Comments exh. 2, Email Correspondence Between Empire’s Counsel and the Air Force at 2. This protest followed on December 20.

The Air Force posted the redacted J&A document to beta.SAM.gov on December 28 and Empire filed a supplemental protest. COS at 11-12. On January 5, 2022, the agency “determined that performance of the [interim] contract meets urgent and compelling circumstances that significantly affect the national security and will not

permit waiting for a GAO decision because of the critical nature of the service.” Accordingly, the agency exercised its discretion to override the CICA stay of performance in this procurement.<sup>3</sup> AR, Tab 37, CICA Stay Override D&F at 7. In support of its override determination, the agency stated that a limited competition would take approximately two months, and that the agency could not delay corrosion control services for the duration of such a competition. *Id.* at 2. The D&F, which we discuss in greater detail later in the decision, also provided further explanation as to why the agency selected Starlight for the sole-source award.

## DISCUSSION

The protester primarily argues the agency violated the FAR by failing to seek competition for the services to the maximum extent practicable. Supp. Protest at 5-12; see *also* Protest at 8-12. Empire also asserts that the J&A is deficient and that the agency unreasonably failed to consider Empire’s capability to perform the bridge contract before awarding the contract to Starlight. Supp. Protest at 3, 7-12; see *also* Protest at 10-12. For the reasons that follow, we find no basis to sustain Empire’s protest.<sup>4</sup>

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<sup>3</sup> If an agency determines that notwithstanding the pending protest at our Office, performance of the contract is “in the best interests of the United States” or that “urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision” of our Office on the protest, the agency may execute a written finding authorizing the awardee to proceed with contract performance and thereby override the CICA stay. 31 U.S.C. § 3553(d)(3)(C)(i); see *also* FAR 33.104(c)(2).

<sup>4</sup> Empire raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester’s additional allegations and find that none provides a basis on which to sustain the protest. For example, the protester argues the term of the interim contract is unjustifiably long. Protest at 12-13; Supp. Protest at 12-14. The agency responds that the contract contains a termination for convenience clause and asserts that the term of the contract is limited to the time needed to resolve the *Starlight II* protest. COS at 22.

Here, the record shows that the agency’s reevaluation of proposals, including receipt of revised proposals, took approximately 30 days to complete, which supports the agency’s determination that it is likely to take approximately two months for the agency “to solicit, allow for responses to proposals, evaluate, and make award.” COS at 8. In this regard, we note that the protester’s disagreement, without more, as to the time period required to conduct a competition does not show that the agency’s judgment was unreasonable. See *Systems Integration & Mgmt., Inc.*, B-402785.2, Aug. 10, 2010, 2010 CPD ¶ 207 at 3. Thus, we find no basis to conclude that awarding a 6-month contract to Starlight which includes a termination clause is unreasonable.

As a general rule, contracts must be awarded through the use of full and open competition, 10 U.S.C. § 2304(a)(1)(A), and agencies may use simplified procedures when acquiring goods or services below the simplified acquisition threshold, or below \$5,000,000 for commercial goods or services.<sup>5</sup> 41 U.S.C. § 1901(a)(1) and (2). See *also* 10 U.S.C. § 2302b (implementing simplified acquisition procedures for Department of Defense contracting activities). When conducting a procurement using 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. § 1901(c); FAR 13.104; see *also Information Ventures, Inc.*, B-293541, Apr. 9, 2004, 2004 CPD ¶ 81 at 3.

As an exception to the general competition requirements, a contracting officer may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source 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. *Summit Techs., Inc.*, B-419126, B-419126.2, Nov. 19, 2020, 2020 CPD ¶ 384 at 4; *Critical Process Filtration, Inc.*, B-400746 *et al.*, Jan. 22, 2009, 2009 CPD ¶ 25 at 5.

Here, the Air Force used simplified acquisition procedures to procure interim corrosion control services and cited unusual and compelling urgency as the justification for the sole-source contract to Starlight. The J&A indicated that the estimated cost of the interim contract was \$567,000, including the two option periods. AR, Tab 26, J&A at 1. The J&A stated that corrosion control services were critical to the maintenance and safety of the C-5 and C-17 fleets at Dover AFB, which would be grounded if the fleets were not serviced. *Id.* at 2-3. The J&A also noted that two aircraft required and were scheduled for services within a week of the interim contract award, and that grounding these aircraft would result in a significant negative impact on national security. *Id.* The J&A asserted that it would be cost prohibitive for government personnel to provide the services or to continue to schedule services at other bases. *Id.* at 2-3. The agency also explained that there was insufficient time to conduct a limited competition and that award of a limited interim contract would be a better means for acquiring services than overriding the CICA stay in place as a result of the *Starlight II* protest. COS at 7. In this case, given the filing of the *Starlight II* protest, and subsequent stay in performance of the contract competitively awarded to Empire, we find the agency's decision to limit competition was reasonable where the record shows that the agency had an immediate need for services.

Empire also argues that the Air Force unreasonably failed to consider the protester's capability to perform. Supp. Protest at 3, 8-11; see *also* Protest at 10-12. Empire contends that it could have easily performed the services if the agency had decided to override the CICA stay and allowed Empire to continue performing its previously

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<sup>5</sup> The simplified acquisition threshold for the relevant time period was \$150,000. 48 C.F.R. subpart 2.1 (2021).

awarded contract. Protest at 4, 10-11. To the extent the protester disagrees with the agency's judgment as to how best to address its needs, such disagreement, without more, is insufficient to show that the agency's judgment is unreasonable. Further, as discussed in greater detail below, the agency did recognize that Empire had the capability to perform.

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 limited sole-source contract to Starlight, to ensure the corrosion control services continue as scheduled in the immediate future. We further find reasonable the agency's conclusion that it could not have conducted a limited competition in time to satisfy its immediate requirements.

The protester argues that the sole-source award to Starlight is improper because the J&A fails to meet the mandatory content requirements for simplified acquisitions. Comments at 15-21, 29-34. In particular, the protester argues that the J&A did not identify Starlight's unique qualifications or any vendor's capabilities and that the market research identified in the J&A is misleading.<sup>6</sup> Supp. Protest at 8-12. Moreover, Empire argues that none of the Air Force's explanations for its sole-source award to Starlight without holding a limited competition are present in the J&A.

In the agency report, which contained a contracting officer's statement dated January 18, 2022, the Air Force explains its justification for awarding a sole-source contract to Starlight. COS at 7-12. The agency report also includes the D&F executed on January 5 in support of the agency's decision to override the CICA stay generated by the protest. The Air Force explains that executing a limited sole-source contract was "imperative to sustain performance of corrosion control services essential to the maintenance and safety of the C-17 and C-5 fleets at Dover AFB" and avoid adverse mission impacts due to the *Starlight II* protest and second suspension of Empire's contract performance. AR, Tab 37, CICA Stay Override D&F at 2, 6. In particular, a C-17 located at Dover AFB required wash services to avoid grounding and these services were scheduled for December 11-12--a few days after Empire's performance was suspended. *Id.*; see also COS at 11. The agency also determined that a limited competition would take approximately two months, which would unacceptably delay corrosion control services for up to ten aircraft, ground these aircraft for the duration of the limited competition, and result in an overall loss in readiness. AR, Tab 37, CICA Stay Override D&F at 2, 6; COS at 8.

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<sup>6</sup> The market research described in the J&A was performed in April 2021 and related to the RFP at issue in the *Starlight II* protest. AR, Tab 5a, Market Research Report Dated April 9, 2021. The record shows that the agency relied upon its previous market research in the market research report prepared for the bridge contract. AR, Tab 5b, Bridge Market Research Report Dated Dec. 8, 2021, at 5.

The agency acknowledged that it had received information from both Starlight and Empire demonstrating that they would be capable of performing the required work. AR, Tab 37, CICA Stay Override D&F at 2; COS at 8, 15. The Air Force noted that under the related solicitation, where award was to be made on a best-value tradeoff basis with past performance more important than price, the agency had selected Empire's proposal, which received a rating of substantial confidence for past performance, over Starlight's proposal, which received a rating of satisfactory confidence.

For award of the interim contract, in contrast, the agency considered price to be of equal importance to past performance. AR, Tab 37, CICA Stay Override D&F at 2; COS at 9-10. The Air Force therefore determined that as Starlight "was the lowest-priced, technically acceptable offeror with Satisfactory past performance in a recently competed contract for like services . . . and the Government did not have time to support a limited competition and meet the urgent need," it would award a sole-source contract to Starlight. AR, Tab 37, CICA Stay Override D&F at 2; *see also* COS at 9-10.

On this record, to the extent that the J&A may have contained factual inaccuracies or may not have fully documented the basis for the sole-source contract in accordance with simplified acquisition procedures, Empire has not demonstrated how it has been prejudiced by those errors. Competitive prejudice is an essential element of a viable protest; where 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, even if deficiencies in the procurement are found. *HP Enter. Servs., LLC*, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6; *see also SSI Tech., Inc.*, B-417917, Dec. 4, 2019, 2019 CPD ¶ 418 at 6 (denying protest challenging the adequacy of an agency's J&A for a sole-source contract based on unusual and compelling urgency where the protester failed to establish competitive prejudice).

As stated above, the agency report and the D&F for the CICA override of the bridge contract provided additional details about the Air Force's justification for the sole-source contract to Starlight. The FAR provides that, when preparation and approval of a J&A would unreasonably delay an acquisition under the authority cited in FAR section 6.302-2, an agency is permitted to prepare and approve the J&A after the award has been made.<sup>7</sup> FAR 6.303-1(e). Because the Air Force's justification for the sole-source contract, as supplemented by the agency report and the D&F for the CICA override, provides a reasonable basis for the agency's decision, we cannot conclude that Empire

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<sup>7</sup> As set forth above, the Air Force awarded this sole-source contract in accordance with simplified procedures for certain commercial items, in which case they are exempt from the competition requirements of FAR part 6, Competition Requirements. FAR 13.501(a)(1). Notwithstanding this exemption, the agency is required to prepare a written justification for a sole-source award in accordance with FAR 6.303-2, which stipulates the content of justifications for other than full and open competition. FAR 13.501(a)(1)(ii).

was prejudiced by the flaws in the J&A. Accordingly, we find no basis on which to sustain the challenges to the adequacy of the J&A.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel