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Decision

Matter of: Atlantic Diving Supply, Inc.

File: B-422758, B-422758.2

Date: October 15, 2024

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DIGEST

Protest that decision to award a sole-source contract lacks a proper basis is denied where the record supports the reasonableness of the agency's justification and approval of the sole-source contract award.

DECISION

Atlantic Diving Supply, Inc. (ADS), of Virginia Beach, Virginia, protests the agency's intent to award a sole-source contract to Caterpillar, Inc., of Peoria, Illinois, under request for proposals (RFP) No. W912CH-24-R-0017, issued by the Department of the Army for service life extension program (SLEP) work on Caterpillar earthmoving equipment. ADS contends that the agency's decision to award this contract on a sole-source basis lacks proper justification.

We deny the protest.

BACKGROUND

The Requirement

The Army requires a contractor to provide SLEP services on approximately 240 pieces of government-owned Caterpillar compaction and earthmoving equipment. Agency Report (AR), Tab 3-3, SAM.gov Posting, May 2, 2024, at 3. The SLEP effort will consist of two parts--a core effort that includes “only those tasks that are common to and performed on each vehicle,” and an additional work effort (AWE) for “repair actions beyond the Core Effort which are unique to each individual vehicle based on its condition.” *Id.* Contract performance will also include providing warehouse space, vehicle pick-up and delivery, and vehicle inspection and testing, among other ancillary services. AR, Tab 3-1, Revised RFP at 199-200.

Initial Market Research

On May 19, 2022, the Army issued a sources sought questionnaire, also referred to as a request for information (RFI), “to better understand the availability and capabilities of the Original Equipment Manufacturer (“OEM”) [Caterpillar] or other qualified equipment sources to provide SLEP on Army Combat Engineer equipment.” Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 3; see AR, Tab 6-1, Questionnaire. On July 5, ADS and Caterpillar responded to the questionnaire. See AR, Tabs 6-2, ADS Questionnaire Response, and 6-3, Caterpillar Questionnaire Response. ADS stated that its team included Carter Machinery¹ and Red River Army Depot (RRAD); “ADS would provide total contract management support, RRAD would complete the disassembly and assembly of the vehicles, while Carter Machinery will provide all the parts, component rebuilds, and technical support.” *Id.* at 1.

Under performance capabilities, item 1.1, the questionnaire asked: “Has your company previously performed SLEP or RESET^[2] for the U.S. Department of Defense [(DOD)]?” AR, Tab 6-1, Questionnaire at 5. The questionnaire required firms to “[s]tate the [DOD]

¹ ADS states that Carter Machinery, a wholly owned subsidiary of Caterpillar, Inc., “currently has 27 SLEP rebuilds for the Army at their facilities under the CAT Defense contract.” AR, Tabs 6-2, ADS Questionnaire Response at 1. Elsewhere, ADS states that “Carter Machinery [] is an independent dealer of Caterpillar.” AR, Tab 8-8, ADS Capability Statement at 5. The issue of the corporate structure of Carter Machinery is not material to the resolution of this protest.

² The agency explains that SLEP, which is also referred to as REBUILD, “is maintenance that restores the system to a like-new condition in appearance, performance, and life expectancy” and “inserts new technology where practical to improve reliability and maintainability.” AR, Tab 15-1, Army’s Response to GAO’s Question at 2; see AR 15-2, Army Regulation 750-1. In contrast, RESET is a “set of actions to restore equipment to a desired level of combat capability commensurate with a unit’s future mission” and “reverses the effects of combat stress on equipment.” *Id.*

service, the systems, age of the systems and what work was performed.” *Id.* In response, ADS provided an extensive list of equipment serviced, without indicating whether the work was SLEP or RESET, the systems, or the age of the systems. See AR, Tab 6-2, ADS Questionnaire Response at 8-10, 24.

In Caterpillar’s response to that same question, the intervenor indicated that it has 26 years of experience performing as the primary contract holder for SLEP contracts and listed its five most recent contracts. AR, Tab 6-3, Caterpillar Questionnaire Response at 10. Caterpillar stated that

[s]cope of work includes returning SLEP rebuilds to “like-new” condition (zero hour/zero mile), including a core effort, which are tasks that are common to and performed on each vehicle and an additional work effort, which is a set of repair actions beyond the core effort which are unique to each vehicle based on its condition. Efforts include the replacement of parts that do not meet the appropriate service manual and reusability specifications, testing to ensure the vehicle meets required capabilities, [chemical agency resistance coating (CARC)] paint, and return transportation as required by contract.

Id.

Justification and Approval

In March 2023, the Army finalized its justification and approval (J&A) for awarding this contract to Caterpillar. AR, Tab 7, J&A at 1. The J&A cited as authority for the sole-source contract Federal Acquisition Regulation (FAR) subsection 6.302-1(a)(2)(ii)(A), which provides that supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to any other source would result in a substantial duplication of cost to the government that is not expected to be recovered through competition. *Id.* at 2.³ The J&A explained that the current requirement would be a follow-on effort to the previous SLEP contract W56HZV-20-D-0094 awarded to Caterpillar. AR, Tab 7, J&A at 2. The vehicles--versions of Caterpillar’s commercial products that Caterpillar modified to meet unique military requirements--were produced by Caterpillar under prior Army Contracting Command-Detroit Arsenal (ACC-DTA) contracts, and some vehicles have undergone previous overhaul efforts. *Id.* The J&A noted that “the Government does not have the pertinent technical data to enable a competitive re-procurement.” *Id.* As the OEM, the J&A explained, Caterpillar retains the technical data rights to the vehicles and that technical data includes specifications for the changes Caterpillar made to its vehicles to

³ The acquisition plan included an alternate basis for deeming that supplies are only available from one source--FAR subsection 6.302-1(a)(2)(ii)(B), when award to any other source is likely to result in unacceptable delays in fulfilling the agency’s requirements. AR, Tab 14-4, Acquisition Plan, at 12-13.

meet the Army's unique requirements. *Id.* The Army stated that Caterpillar would not sell its proprietary vehicle technical data to the government.⁴ *Id.*

The J&A stated that Caterpillar was "in the unique position to perform this work because of its direct manufacturing, extensive dealer network and supply chain, field support, and historical experience performing SLEP on these vehicles." *Id.* at 3. Caterpillar has knowledge that includes: "design, manufacturing engineering, test, and user data; service bulletins; and supply chain data." *Id.* The J&A observed that Caterpillar has successfully completed SLEP efforts on all the solicitation's vehicle types, under multiple delivery orders issued against previous contracts; for all of these reasons, in the Army's estimation, "any other source would have a significant learning curve before the risk of unsuccessful performance would be at an acceptable level." *Id.*

The J&A included ADS's response to the RFI. *See id.* at 6. The J&A noted that "ADS proposed a team approach with itself providing 'total contract management support,' RRAD providing 'disassembly and assembly of the vehicles' and Carter Machinery providing 'all the parts, component rebuilds, and technical support.'" *Id.* The J&A concluded that ADS, as a prime contractor for SLEP, would be required to complete a pilot effort with its partners, Carter Machinery and RRAD, at a substantial additional cost and schedule impact to the program. *Id.* The J&A noted that "[t]he ADS team would be dependent on the vehicle OEM for their supply chain in order to obtain the mandatory and condition based replacement components, and therefore unable to offer any cost advantage on materials over the current contract with Caterpillar." *Id.* The J&A asserted that "[a]n effort employing RRAD would also be subject to a lengthy pilot effort, in the absence of the proprietary vehicle specifications, and with increased cost risk due to the labor rate structure of the Army organic industrial base." *Id.*

The J&A found that "[n]o other source possesses the original assembly specifications, interface requirements, or tolerance requirements to which these vehicles were manufactured." *Id.* at 3. For that reason, the J&A concluded that any source other than Caterpillar would need to reverse engineer the vehicles, create the needed design and manufacturing data, and fully test the item to perform this effort. *Id.* The Army's Combat Capabilities Development Command, Ground Vehicle Systems Center, developed an engineering estimate. *Id.* Using eight vehicle platforms as a basis, with an average of 6,000 parts per vehicle, the Army estimated the reverse engineering costs to be \$198,133,120. *Id.* The chart below provides the breakdown of the estimated reverse engineering costs:

⁴ On January 31, 2023, ACC-DTA inquired if Caterpillar was willing to sell the technical data package (TDP) for the vehicles that are the subject of this requirement. *Id.* According to the agency, Caterpillar responded on February 2, as follows: "Caterpillar is not interested in selling Technical Data Packages for our product line as we deem this Proprietary Intellectual Property for our commercial business." *Id.*

i - Remove Parts/Disassemble Machine	\$2,133,120
ii – Technical Data Package (TDP)/Part Drawings for Fabrication	\$40,000,000
iii - Production Planning and Tooling	\$64,000,000
iv - Testing (Validation & Verification)	\$60,000,000
v - TDP Maintenance	\$32,000,000
Total Estimated Cost to Reverse Engineer Vehicle	\$ 198,133,120

Id. The J&A explained how the Army arrived at a total for each of the five component costs. *Id.* at 3-5. For example, regarding testing, the J&A explained that

[v]ehicles undergoing the SLEP process by a contractor other than Caterpillar will have to undergo contractor testing (validation) and Government testing (verification). This is required to assure the product conforms to the Purchase Description (PD). The estimate for validation is \$5M, while the estimate for verification costs is \$1.5M, which are both based on similar efforts. The Government’s cost to perform verification efforts is significantly lower as the validation is performed first and generally eliminates the need for the Government to perform duplicative testing efforts. In addition to the testing efforts, the contractor must provide subject matter experts to support Government testing. The estimated cost for contractor test support is \$1M over and above the estimated costs of validation and verification testing. The required re-testing would result in duplicated costs of \$5M for validation, \$1.5M for verification, and \$1M for contractor test support for a total duplicated cost of \$7.5M for testing per vehicle platform, for a total cost of \$60M for the eight vehicle platforms planned to undergo SLEP.

Id. at 4. The Army estimated the value of the contract to be \$[DELETED]. AR, Tab 14-4, Acquisition Plan at 3. The projected cost to reverse engineer the vehicles was thus over [DELETED] the estimated value of the contract.

Acquisition Plan

The Army approved an acquisition plan for the requirement on April 24, 2023. *Id.* at 1. The plan proposed a sole-source requirements contract, with fixed-price and fixed-price with economic price adjustment contract line item numbers (CLINs); the proposed period of performance was five 1-year ordering periods and five 1-year option periods. *Id.* at 3. The contractor would be required to perform SLEP work on as estimated 256 government furnished vehicles. *Id.* The SLEP will return vehicles to like-new condition (zero hour, zero miles) so that they will be operable for another 10 to 15 years. *Id.* at 8.

The acquisition plan noted that Caterpillar has a “broad dealer network across the continental United States which can perform SLEP to like new specification.” *Id.* at 11. While not included in the J&A, the agency’s acquisition plan noted that transportation costs unique to ADS’s proposal would also be a deciding factor. *Id.* at 12. The Army explained that “[o]ne of the key advantages with Caterpillar is their regional dealer

network that enables performance of SLEP on candidate vehicles close to their home station,” thus minimizing transportation costs to the government. *Id.* ADS, in contrast, proposed to centralize vehicle disassembly and assembly at RRAD, which would require that every SLEP candidate vehicle be transported to RRAD, regardless of the point of origin. *Id.* The Army noted that, while some vehicles might be drawn from storage at RRAD, or relatively close by, vehicles are spread across the continental United States and beyond. *Id.* In the agency’s estimation, shipping those vehicles to RRAD and back at government expense “would be cost prohibitive.” *Id.*⁵ ADS did not address the Army’s claims that transportation of the vehicles, as contemplated in the protester’s proposal, would be prohibitively expensive. See Comments and Supp. Protest.

Beyond the prohibitive shipping costs associated with ADS’s proposed approach, the acquisition plan noted that “Caterpillar retains the proprietary technical data on the SLEP candidate vehicles.” *Id.* For that reason, ADS’s reliance on RRAD to disassemble and reassemble the SLEP vehicles “may be problematic” and could “lead to significant cost growth and performance schedule delays.” *Id.*

The acquisition plan stated that “[s]upplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in (A) a substantial duplication of cost to the Government that is not expected to be recovered through competition.” *Id.* at 12, quoting FAR 6.302-1(a)(2)(ii). The acquisition plan noted the fact that, as the OEM, Caterpillar retains the technical data rights to these vehicles, and Caterpillar’s technical data includes specifications for the changes it made to meet Army requirements for which there is no commercial equivalent. AR, Tab 14-4, Acquisition Plan at 12. The acquisition plan observed that the government does not have the pertinent technical data to enable competitive re-procurement, because Caterpillar declined to sell the TDP rights to the Government. *Id.* at 13. For that reason, the acquisition plan concluded, any other firm would need either to reverse engineer the Caterpillar product to perform SLEP repairs or to obtain necessary component packages from Caterpillar as the OEM, resulting in a substantial duplication of cost to the Government not expected to be recovered through competition. *Id.*

In summary, the acquisition plan provided for a sole-source contract award to Caterpillar because the “[t]he estimated costs to create a competitive SLEP would result in substantial duplication of costs which the Government does not expect to recover through a competitive procurement.” *Id.* at 12. In the Army’s view, “in [the] absence of the proprietary technical data and specific production expertise that only Caterpillar can

⁵ ADS’s proposed approach also suggested that components might be shipped from RRAD to Carter Machinery locations for re-work, which would further add to transportation costs. *Id.*

provide,” award to any other offeror could “lead to significant cost growth and performance schedule delays.” *Id.*

Pre-solicitation Notice and ADS Response

In May 2023, the Army issued a pre-solicitation notice on SAM.gov indicating that the agency intended to award the equipment SLEP on a sole-source basis to Caterpillar. AR, Tab 6-4, Pre-solicitation Notice at 3. The notice advised interested firms that it was not a request for competitive proposals or a solicitation of offers, but that all responsible sources were permitted to submit a capability statement that the Army would consider. *Id.* at 4. In response, ADS reiterated that its team could perform the requirement and provided the Army with another copy of ADS’s response to the RFI. AR, Tab 6-5, ADS Response to Pre-solicitation Notice at 1.

ADS Agency-Level Protest and Army Response

In November, ADS filed an agency-level protest asserting that the Army’s “decision to make a sole-source award to Caterpillar was improper because [the Army] did not meaningfully consider the capabilities of other sources (specifically, the ADS-Carter Machinery team) and therefore did not satisfy the requirements of FAR 6.302-1(a)(2)(ii).” AR, Tab 8-2, Agency-Level Protest at 1. (The agency-level protest was largely reiterated by the protest to GAO, which will be discussed in some detail below.) In January 2024, the Army dismissed the protest as premature and as failing to conform to the requirements in FAR section 33.103(d)(2).⁶ AR, Tab 8-3, Army Response to Agency Level Protest at 1.

RFP, Revised RFP, and GAO Protest

On January 26, 2024, the Army posted the RFP to SAM.gov, noting that, under the authority of FAR section 6.302-1(a)(2)(ii), the agency would award the contract for the earthmoving equipment SLEP on a sole-source basis to Caterpillar. AR, Tab 5-6, RFP SAM.gov Posting at 4-5. The posting also permitted all responsible sources to submit a capability statement, bid, proposal, or quotation, which shall be considered by the agency. *Id.* The core requirement would be fixed-price with economic price adjustment CLINs and the AWE requirement would be fixed-price CLINs. AR, Tab 5-1, RFP at 4. The term would be 5 years, with 5 optional years. *Id.* On April 24, after further discussions with Caterpillar, the Army issued a revised, virtually unchanged, RFP with a closing date of May 3. AR, Tab 3-1, Revised RFP at 1; COS/MOL at 16.

The Army and ADS exchanged emails regarding the appropriate response ADS should make to the issuance of the revised RFP. See COS/MOL at 17. On May 2, the Army sent ADS a letter in response to the protester’s request for an explanation as to why the

⁶ Section 33.103(d)(2) of the FAR sets forth eight required components of a protest to an agency that are similar to the requirements for filing a protest at GAO. Compare FAR 33.103(d)(2) with 4 C.F.R. § 21.1(c).

agency was proceeding with a sole-source contract award to Caterpillar. AR, Tab 8-7, Agency Response to ADS Inquiry. In answer, the agency provided excerpts from the not yet released J&A that found “ADS as a prime contractor for SLEP would be required to complete a pilot effort with its partners, Carter Machinery and RRAD, at a substantial additional cost and schedule impact to the program, before proceeding to overhaul Earthmoving vehicles in larger quantities.” *Id.* at 1. The redacted J&A further found that ADS’s “effort employing RRAD would also be subject to a lengthy pilot effort, in the absence of the proprietary vehicle specifications” and that “RRAD is principally a source for RESET of vehicles to 10/20 standards,⁷ which is vastly different from restoring a vehicle to near zero miles and original factory specifications.” *Id.* at 2.

On May 3, via email, ADS submitted a capability statement to the Army in response to the SAM.gov Earthmoving SLEP posting for RFP W912CH-24-R-0017. AR, Tab 8-9, ADS & Army Email Exchange at 2; AR, Tab 8-8, ADS Capability Statement. The capability statement did not address the concerns articulated by the Army in its May 2 communication to ADS, noted above. See AR, Tab 8-8, ADS Capability Statement at 6. The Army confirmed receipt of ADS’s response and stated that the Army “will conduct a thorough review of the capabilities provided and reach out if we have any questions.” AR, Tab 8-9, ADS & Army Email Exchange at 1.

On May 23, 2024, the Army’s technical analysis of ADS’s capability statement reiterated the Army’s earlier evaluation of ADS’s response to the RFI, namely, that “ADS as a prime contractor for SLEP, with its partners, Carter Machinery and RRAD, would not be able to complete the SLEP effort without a substantial duplication of cost to the Government” and that “[t]hese costs would not be mitigated by competition.” AR, Tab 9, Technical Evaluation Analysis Memorandum at 3.

On July 2, the Army advised ADS that the agency “position remains unchanged from its previous evaluation of the RFI submittal by ADS in June 2023.” AR, Tab 8-9, ADS & Army Email Exchange at 1. This protest followed.

DISCUSSION

ADS argues that the Army “acted arbitrarily and not in accordance with the FAR’s requirements by either outright ignoring or at best failing to meaningfully consider ADS’s capabilities when [the agency] concluded that it must award the Contract to the Awardee to avoid cost duplications and unacceptable delays.” Protest at 6. The protester contends that the solicitation notice provides no basis for the conclusion that the awardee is the only company able to supply these items and services without causing a substantial duplication of cost to the government. *Id.*, citing FAR 6.302-1(a)(2)(ii). The Army contends that “ADS’s protest demonstrates a fundamental misunderstanding of the Army’s rationale for the anticipated sole-source procurement” and that “the procurement record shows that the Army executed a valid and reasonable

⁷ DOD describes “Technical Manual 10/20 standards” as “all routine maintenance executed and all deficiencies repaired.” DOD Report No. D-2008-024 at 10.

J&A, which fully supports the Army's decision to proceed with a sole-source award to Caterpillar." COS/MOL at 2.

The Competition in Contracting Act (CICA) mandates "full and open competition" through the use of competitive procedures in government procurements. 10 U.S.C. § 3201(a)(1). CICA, however, provides several exceptions to this requirement, including when an agency's requirements can only be satisfied by one responsible source, and no other type of supplies or services will satisfy agency requirements. See 10 U.S.C. § 3204(a)(1); FAR 6.302-1(a)(2). As relevant here, 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 supplies or services may be deemed to be available only from the original source. See 10 U.S.C. § 3204(b)(B); FAR 6.302-1(a)(2)(ii). Such supplies or services 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: substantial duplication of costs, which is not expected to be recovered through competition; or unacceptable delays in fulfilling the agency's needs. See *id.*

When an agency uses noncompetitive procedures pursuant to 10 U.S.C. § 3204(a)(1), it is required to execute a written justification and approval with sufficient facts and rationale to support the use of the cited authority. See 10 U.S.C. § 3204(e); FAR 6.302-1(d)(1). 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 justification and approval; where the justification and approval sets forth a reasonable basis for the agency's actions, we will not object to the award. *FN Am., LLC*, B-415261, B-415261.2, Dec. 12, 2017, 2017 CPD ¶ 380 at 5. Where an agency does not possess adequate data or data rights to conduct a competitive procurement, we have recognized a proper basis for a sole-source award. *Wamore, Inc.*, B-417450, B-417450.2, July 9, 2019, 2019 CPD ¶ 253 at 8, *citing Coastal Seal Servs., LLC*, B-406219, Mar. 12, 2012, 2012 CPD ¶ 111 at 5 (sole-source for replacement stern tube shaft seal repair kits justified where the agency did not acquire technical data rights to allow for a competitive procurement); *Raytheon Co.-Integrated Def. Sys.*, B-400610 *et al.*, Dec. 22, 2008, 2009 CPD ¶ 8 at 6 (sole-source for Department of the Navy's Aegis modernization program justified where agency did not possess a TDP adequate for competition without undue risk); see *also* FAR 6.302-1(b)(2). As discussed below, ADS fails to demonstrate that the Army's J&A is unreasonable.

Principally, the J&A contends that contract award to any offeror other than Caterpillar would result in a substantial duplication of cost. AR, Tab 7, J&A at 3-5. Most significantly, as noted above, the Army estimated the reverse engineering costs to be \$198,133,120. *Id.* at 3. The estimate was based on these two premises: that any source other than Caterpillar would need to reverse engineer the vehicles, and that no other source possesses the original assembly specifications, interface requirements, or tolerance requirements to which these vehicles were built. *Id.*

ADS argues that “[t]he Agency’s estimate of duplicative costs appears to be overly inflated and lacks any analysis of the known, potential offerors including ADS (and its proposed primary subcontractor, Carter Machinery).” Comments and Supp. Protest at 5. The protester does not provide a rationale for why the costs are inflated or challenge the specific bases of the estimated cost to reverse engineer the vehicles provided in the J&A. See *id.* Moreover, the estimated costs to reverse engineer the vehicles is over [DELETED] the estimated value of the contract; even if the estimated duplicative costs are inflated, they would still be considerable in comparison to the contract value.

Beyond the unsupported assertion that the costs are inflated, ADS does not challenge the J&A’s two premises, but instead offers a competing one. The protester argues that Caterpillar “dealers are absolutely required” to perform the work “given CAT’s [Caterpillar’s] corporate/independent dealer structure.” *Id.* at 6. Therefore, ADS contends, “conceptually, cost duplications would not be present or would be minimal based upon the required partnership between OEM and dealer(s),” regardless of whether the contract was issued on a sole-source basis to Caterpillar or competed. *Id.*

The protester ignores the salient fact that Caterpillar--as the prime OEM contractor--may access its proprietary technical information, including the TDP. As the prime contractor, Caterpillar can make that information available to its dealership subcontractors. A Caterpillar dealership such as Carter Machinery, acting as part of another prime contractor team, would not have access to the OEM’s proprietary information. See AR, Tab 7, J&A at 3-5 (noting that “a contractor other than the OEM” would encounter significant additional costs of performance because they would not have access to the same information as Caterpillar). ADS fails to address the Army’s straightforward assertion that Caterpillar, as the OEM, is uniquely positioned to perform the requirement less expensively and more expeditiously than any other firm, even though Caterpillar will utilize dealerships in contract performance.

ADS also argues that the “[agency report] demonstrates clearly that the Agency never properly considered ADS’s submissions.” Comments and Supp. Protest at 7. The protester contends that “the Agency’s technical evaluation of ADS’s capability statement summarily dismisses each of ADS’s proposed alternative approaches without thoroughly analyzing whether ADS’s proposed alternative approaches could provide value to the government.” *Id.*, citing AR, Tab 9, Technical Evaluation Analysis Memorandum. ADS does not identify its “proposed alternative approaches” that the agency is alleged to have summarily dismissed. See Comments and Supp. Protest. It is not clear from ADS’s response to the RFI what were the protester’s alternative approaches. See AR, Tab 6-2, ADS Questionnaire Response 8, 23. The J&A considered ADS’s contributions to the agency’s market research, finding that, while ADS could perform the requirement, doing so would be at a substantial additional cost and schedule impact to the program. See AR, Tab 7, J&A at 6.

As noted above, 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; where a J&A sets forth a reasonable basis for the agency's actions, we will not object to the award. *FN Am., LLC, supra*. Moreover, where an agency does not possess adequate data--or data rights--to conduct a competitive procurement, we have recognized that a proper basis for a sole-source award exists. *Wamore, Inc., supra*. The protester's challenges to the J&A do not call into question the agency's straightforward rationale that no firm other than the OEM, Caterpillar, will have access to Caterpillar's proprietary information, and, without that information, another offeror's total cost of contract performance will be substantially higher. The J&A sets forth a reasonable basis for the agency's actions--that the agency lacks the TDP and other proprietary Caterpillar information. The record provides no basis on which to find that rationale unreasonable, and we deny it.

The protest is denied.

Edda Emmanuelli Perez
General Counsel