



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Blackhawk Management Corporation

File: B-256589

Date: April 7, 1994

DECISION

Blackhawk Management Corporation protests the award of a letter subcontract to Alamo Technology, Inc. for technical support services at Brooks Air Force Base.¹ The award was made under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. IV 1992).² Blackhawk contends that the Air Force knew that Alamo did not have to begin immediately providing these services; therefore, the award was made in bad faith as an attempt to favor Alamo and to eliminate other small disadvantaged business concerns from consideration.³

We dismiss the protest.

On January 11, 1994, the contracting officer orally informed Blackhawk that Alamo had been awarded a letter contract by the SBA. During a January 26 meeting with Blackhawk representatives that the agency explains was held to discuss future business opportunities for Blackhawk--not to discuss the award decision here--the contracting officer reiterated

¹A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. Federal Acquisition Regulation (FAR) § 16.603-1.

²Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns.

³Prior to filing the protest, Blackhawk filed an agency-level protest (on the date of the award), raising another issue. In that protest, Blackhawk contended that Alamo was ineligible to receive the award because, in its view, Alamo had graduated from the 8(a) program prior to the date of award. Blackhawk's current protest does not include this allegation.

that the letter contract was awarded on account of Alamo's impending graduation from the 8(a) program. Approximately two weeks after the meeting, the contracting officer received a letter dated February 2 from Blackhawk, which requested a reply to its "protest letter of January 13."

The contracting officer subsequently contacted Blackhawk and explained that the agency had not received any January 13 protest letter from Blackhawk. On February 9, Blackhawk sent the contracting officer a copy of the letter by facsimile transmission.¹ By letter dated February 15, the contracting officer advised Blackhawk that its protest was untimely. Upon receipt of the agency's dismissal, Blackhawk filed a protest with our Office, which it argues is timely because the protest was filed within 10 working days after it learned that it would not receive a "final, written decision" responding to its agency-level protest.

As a preliminary matter, Blackhawk's challenge to the SBA's decision to award a subcontract to Blackhawk under the small disadvantaged business subcontracting program is generally not within our bid protest jurisdiction. 4 C.F.R. § 21.3(m)(4). Because of the broad jurisdiction afforded the SBA and the contracting agencies under the applicable statute and regulations, our review of actions under the Section 8(a) program is limited to determining whether government officials have violated regulations or engaged in fraud or bad faith. Lecher Constr. Co.--Recon., B-237964.2, Jan. 29, 1990, 90-1 CPD ¶ 127.

Here, Blackhawk has made no showing of bad faith by government officials. In addition, to the extent Blackhawk contends that the agency has violated the regulations governing the award of letter contracts, our view is that the terms of contracts selected by the SBA in its stewardship of the 8(a) program is a matter within the discretion of the SBA. See Border Maintenance Servs., Inc., B-252689, Apr. 13, 1993, 93-1 CPD ¶ 319.

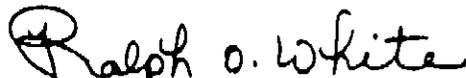
In addition, Blackhawk's protest is untimely. Our Bid Protest Regulations, 4 C.F.R. Part 21 (1993), contain strict timeliness requirements for filing protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2); Munford, Munford & Assocs., B-244803, Sept. 20, 1991, 91-2 CPD ¶ 263. Our Regulations further provide that a matter initially protested to the agency will be considered only if

¹The Blackhawk letter referenced the agency's January 11 notification of award as the basis for its protest.

the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3); Dragon Servs., Inc., B-245858.3, Apr. 14, 1992, 92-1 CPD ¶ 364. An agency-level protest is considered "filed" under our Regulations when it is received by the agency. See Mead Data Central, 70 Comp. Gen. 371 (1991), 91-1 CPD ¶ 330.

The record here shows--and the protester does not dispute--that the agency did not receive Blackhawk's protest until February 9, nearly a month after Blackhawk was advised that Alamo had been awarded a letter contract. To be timely under our Regulations, Blackhawk's agency-level protest would have to have been filed within 10 days after it first learned of its basis to protest. Without some evidence that the agency received a timely protest from Blackhawk, and in the face of substantial evidence that it did not, we have no basis to conclude that it was filed in time to mount an effective challenge to the agency's award decision. Thus, Blackhawk's subsequent protest to our Office was also untimely filed. See B&B Security Consultants, Inc., B-251669, Apr. 6, 1993, 93-1 CPD ¶ 298.

The protest is dismissed.



Ralph O. White
Acting Assistant General Counsel