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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Red River Waste Solutions, Inc.

File: B-414367

Date: March 21, 2017

Johnathan M. Bailey, Esq., Bailey & Bailey, P.C., for the protester.

Scott N. Flesch, Esq., and Maj. Bruce L. Mayeaux, Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's award of an intergovernmental support agreement (IGSA) constitutes the award of a procurement contract that is subject to this Office's bid protest jurisdiction.
 2. Protest challenging an IGSA awardee's qualifications to receive an award is not timely filed, and fails to state a valid basis for protest.
 3. Protest challenging the actions of the IGSA awardee in performing the IGSA are matters of contract administration and not for consideration under GAO's bid protest authority.
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DECISION

Red River Waste Solutions, Inc., of Dripping Springs, Texas, protests the Department of the Army's award of an intergovernmental support agreement (IGSA) to Vernon Parish, Louisiana, to provide waste management/refuse collection services at or near Fort Polk, Louisiana. Red River asserts that the award is contrary to the "enabling statute" that authorizes the award of IGSA's. Protest, Feb. 14, 2017, at 1.

We dismiss the protest.

BACKGROUND

Red River is the incumbent contractor providing refuse collection services for Fort Polk. Previously, we sustained a protest filed by Red River that challenged the terms of a “commercial item” solicitation the agency had issued to recompete the refuse collection requirements. Red River Waste Solutions, LP, B-411760.2, Jan. 20, 2016, 2016 CPD ¶ 45. There, we concluded that the agency had failed to establish that the terms of the solicitation were consistent with customary commercial practice. Id. Following that decision, Red River has continued to perform as the incumbent contractor.

On December 14, 2016, the agency posted to the federal business opportunities website (FedBizOpps) a justification and approval (J&A) for the use of other than full and open competition to extend Red River’s incumbent contract from December 1, 2016 through March 31, 2017. Agency Motion to Dismiss, Feb. 24, 2017, exh. G-2. In the J&A, the agency stated that it was “exploring” various alternatives and “analyzing multiple ways of meeting the solid waste removal requirement . . . including acquiring this service through an Intergovernmental Support Agreement with a local municipality pursuant to 10 USC 2679.” Id. at 1, 5.

In this regard, 10 U.S.C. § 2679, titled “Installation–Support Services: Intergovernmental Support Agreements,” provides as follows:

(a) In General.—

- (1) Notwithstanding any other provision of law governing the award of Federal government contracts for goods and services, the Secretary concerned may enter into an intergovernmental support agreement, on a sole source basis, with a State or local government to provide, receive, or share installation-support services if the Secretary determines that the agreement will serve the best interests of the department by enhancing mission effectiveness or creating efficiencies or economies of scale, including by reducing costs.
- (2) An intergovernmental support agreement under paragraph (1)—
 - (A) May be for a term not to exceed five years; and
 - (B) May use, for installation-support services provided by a State or local government, wage grades normally paid by that State or local government.
- (3) An intergovernmental support agreement under paragraph (1) may only be used when the Secretary concerned or the State or local

government, as the case may be, providing the installation-support services already provides such services for its own use.

- (4) Any contract for the provision of installation-support services awarded by the Federal Government or a State or local government pursuant to an intergovernmental support agreement provided in subsection (a) shall be awarded on a competitive basis.

10 U.S.C. § 2679(a).

On January 31, 2017, pursuant to the above statutory authority, the agency executed an IGSA with Vernon Parish (State of Louisiana) to provide refuse collection services for Fort Polk. Red River states that it “became aware” that the IGSA had been executed “when Vernon Parish announced the execution of the IGSA itself on January 31, 2017.”¹ Red River Response to Agency’s Motion to Dismiss, Mar. 6, 2017, at 8. Thereafter, Red River sought additional information regarding the IGSA and, on February 14, filed this protest.

DISCUSSION

Red River protests the award to Vernon Parish on the basis that “the IGSA violates its enabling statute 10 USC Sec. 2679.” Protest, Feb. 14, 2017, at 1. First, Red River asserts that the award violates section (a)(3) of the statute because “Vernon Parish does not already provide the services being procured.” *Id.* at 7. Next, Red River asserts that the award violates section (a)(4) of the statute because Vernon Parish has not conducted a competition under which Red River could compete for the required services. *Id.* at 8-9.

Jurisdiction

The agency first asserts that the protest should be dismissed on the basis that GAO does not have jurisdiction to review an IGSA awarded under 10 U.S.C. § 2679. Agency’s Motion to Dismiss, Feb. 24, 2017, at 4. In this regard, the agency asserts that “an IGSA is not a procurement contract” subject to the provisions of the Competition in Contracting Act of 1984 (CICA), maintaining that it is “similar” to agreements that are identified as “other transactions,” over which GAO’s bid protest authority does not extend. *Id.* at 4-6. We reject the agency’s assertions regarding our jurisdiction in this matter.

¹ Alternatively, Red River asserts that it learned of the award to Vernon Parish, along with information regarding how Vernon Parish will perform that award, on February 3. Protest at 2.

Under CICA and our Bid Protest Regulations, we review protests concerning alleged violations of procurement statutes or regulations by federal agencies in the award or proposed award of contracts for the procurement of goods and services, and solicitations that lead to such awards. See 31 U.S.C. §§ 3551(1), 3552; 4 C.F.R. § 21.1(a). In circumstances where an agency has statutory authorization to enter into “contracts . . . or other transactions,” we have found that agreements issued by the agency under its “other transaction” authority “are not procurement contracts,” and therefore we generally do not review protests of the award, or solicitations for the award, of these agreements under our bid protest jurisdiction. Rocketplane Kistler, B-310741, Jan. 28, 2008, 2008 CPD ¶ 22 at 3; see also Exploration Partners, LLC, B-298804, Dec. 19, 2006, 2006 CPD ¶ 201 at 3 (finding that “other transaction” agreements, cooperative agreements, and other non-procurement instruments are not procurement contracts); Strong Envtl., Inc., B-311005, Mar. 10, 2008, 2008 CPD ¶ 57 at 4 (GAO does not have jurisdiction to consider the award of a cooperative agreement). We have noted that the “other transaction” authority provided to the Department of Defense is generally limited to basic, applied, and advanced research projects. See MorphoTrust USA, LLC, May 16, 2016, 2016 CPD ¶ 133 at 8 n.14.

Here, the language of the statute at issue does not contain any reference to “other transactions” in authorizing the award of IGSA. Rather, the statute states:

Notwithstanding any other provision of law governing the award of Federal government contracts . . . the Secretary concerned may enter into an intergovernmental support agreement, on a sole source basis, with a State or local government.

10 U.S.C. § 2679(a)(1).

In our view, if Congress had intended for IGSA to be something other than procurement contracts, it would have so stated--and, more significantly, there would have been no need to exempt the award of IGSA, on a sole-source basis, from other provisions of law governing contract awards since, in that context, such an exemption would be redundant and superfluous. See TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (restating the principle that statutes should be construed in a manner such that no clause, sentence or word is rendered superfluous, void or insignificant). Further, there is no dispute that the statute, on its face, anticipates that the federal government will obtain installation support services under this authority. Accordingly, we view an agency’s award of an IGSA pursuant to the authority granted in 10 U.S.C. § 2679 as a procurement contract--albeit one that may be awarded on a sole-source basis--within our bid protest jurisdiction.

Qualifications of the Awardee

First, Red River challenges the IGSA award to Vernon Parish based on the allegation that Vernon Parish “does not already provide the services being procured.” Protest, Feb. 14, 2017, at 7. Red River notes that section (a)(3) of the statutory authority provides that an IGSA may only be awarded when the local authority providing the support services “already provides such services for its own use.” See 10 U.S.C. § 2679(a)(3). In this regard, Red River complains that Vernon Parish is not a qualified IGSA awardee because the refuse collection services it currently provides do not mirror the refuse collection services required by Fort Polk.²

The agency responds that Red River’s protest challenging the qualifications of Vernon Parish as an IGSA awardee is not timely filed. Specifically, the agency asserts that Red River failed to file its protest within 10 days of the time it knew or should have known of its basis for protest. Agency Motion to Dismiss, Feb. 24, 2017, at 6-8. We agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. Gorod Shtor, B-411284, May 22, 2015, 2015 CPD ¶ 162 at 2-3; Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3. Of relevance here, our Bid Protest Regulations require that protests that are not based on alleged improprieties in a solicitation “shall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier).”³ 4 C.F.R. § 21.2(a)(2).

Here, as noted above, Red River acknowledges that it “became aware” that the agency had awarded the IGSA to Vernon Parish “when Vernon Parish announced

² For example, although acknowledging that Vernon Parish does, in fact, currently provide refuse collection services for both residents and businesses through a contract with Progressive Waste Solutions of Louisiana, Inc., Red River complains that Vernon Parish: does not currently “[collect] trash from 8 CY [cubic yard], 20 CY and 40 CY containers”; does not currently collect “food waste in special containers”; and does not currently collect “mixed field waste from military maneuvers.” Protest, Feb. 14, 2017, at 7-8.

³ Red River asserts that the 10-day timeliness rule should be calculated from the date the final IGSA was executed. See Red River Supplemental Submission, Mar. 13, 2017, at 18. Red River is wrong. As noted above, a protest must be filed within 10 days of the date the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

the execution of the IGSA itself on January 31, 2017.”⁴ Thus, by Red River’s own admission, it knew that the IGSA had been awarded to Vernon Parish no later than February 3. Further, as the incumbent refuse collection contractor at Fort Polk, Red River knew the scope of the required services. Nonetheless, Red River did not file its protest with our Office until February 14--more than 10 days later. On this record, Red River’s protest challenging the IGSA award to Vernon Parish on the basis that Vernon Parish does not satisfy the statutory requirements is not timely filed and will not be considered.⁵

Vernon Parish’s Performance of the IGSA

Next, Red River asserts that award of the IGSA was improper because Vernon Parish is not complying with section (a)(4) of the applicable statute, which provides that “any contract for the provision of installation-support services awarded by . . . [a] local government pursuant to an [IGSA] . . . shall be awarded on a competitive basis.”⁶ 10 U.S.C. § 2679(a)(4).

The agency responds by pointing out that the terms of the IGSA awarded to Vernon Parish specifically provide that: “If [Vernon Parish] shall provide services through a contract, the contract must be awarded through competitive procedures.” Agency Motion to Dismiss, Feb. 24, 2017, exh. G-4 at 1. The agency further notes that whether a prime contractor delivers a product or service in accordance with the terms of its contract is a matter of contract administration, for which GAO does not have bid protest authority. See 4 C.F.R. 21.5(a). Accordingly, the agency maintains that this portion of Red River’s protest is not for our consideration. We agree.

⁴ Alternatively, Red River asserts that it learned of the IGSA award to Vernon Parish, along with information regarding how Vernon Parish will perform the IGSA, on February 3. Protest at 2.

⁵ Even if we were to consider Red River’s untimely protest, we do not read the statutory language as requiring that such services be identical to the installation support services for which an IGSA is awarded.

⁶ The record indicates that Vernon Parish extended its existing refuse collection contract with Progressive Waste Solutions of Louisiana, Inc.--which was executed in June 2016--and incorporated all of the provisions of that contract, along with the additional Fort Polk refuse collection requirements, into the agreement. See Protest, exh. 3, Progressive Waste Agreement Amendment for Fort Polk. Our decision here does not express an opinion as to whether actions taken in connection with previously-awarded contracts fall within the scope of the statutory requirements governing contracts “awarded by . . . [a] local government pursuant to an [IGSA].” See 10 U.S.C. § 2679(a)(4).

Where, as here, a prime contract contains certain requirements, including a provision that subcontracts “must be awarded through competitive procedures,” whether the prime contractor performs in a manner consistent with that provision involves a matter of contract administration over which GAO will not exercise our bid protest authority. 4 C.F.R. § 21.5(a); see also United Concordia Companies, Inc., B-404740, Apr. 27, 2011, 2011 CPD ¶ 97 at 9-10; Military Agency Servs. Pty., Ltd., B-290414 et al., Aug. 1, 2002, 2002 CPD ¶ 130 at 3. Based on the record here, we view the agency’s enforcement of the IGSA provisions as matters of contract administration which are not for our consideration.⁷

The protest is dismissed.

Susan A. Poling
General Counsel

⁷ After responding to the agency’s motion to dismiss, Red River forwarded to our Office various documents it obtained from Vernon Parish under an “Open Records request.” Red River Supplemental Submission, Mar. 13, 2017, at 1, exhs. 1-34. To the extent these documents support Red River’s assertion that neither Vernon Parish nor the agency will comply with the IGSA provisions and/or statutory requirements, Red River may wish to pursue the matter directly with the Army, the Department of Justice, or the appropriate Office of Inspector General.