



Decision

Matter of: Craft Bearing Company, Inc.

File: B-418685

Date: June 22, 2020

Donald Moore, for the protester.
Wade L. Brown, Esq., Department of the Army, for the agency.
Karly Newcomb, Raymond Richards, Esq., and Laura Eyester, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the award of a subcontract is dismissed where the subcontract was not awarded by the government and the agency awarding the prime contract has not requested that subcontract protests be decided by our Office.

DECISION

Craft Bearing Company, Inc. (Craft Bearing), a veteran-owned small business of Newport News, Virginia, protests the award of a subcontract issued pursuant to a contract awarded by the Department of the Army, U.S. Army Materiel Command, under solicitation No. W56HZV-15-R-0187, for the development, test, production, training, fielding, and support of the Maneuver Support Vessel (Light) (MSV(L)). The protester contends that the agency is not enforcing the Buy American Act and small business subcontracting plan requirements set forth in the prime contract. Specifically, Craft Bearing complains that the prime contractor and its subcontractor refuse to allow Craft Bearing to compete for a subcontract for bearings, and have instead awarded the subcontract to a large business with a manufacturing plant in England.

We dismiss the protest.

BACKGROUND

On September 28, 2017, the Army awarded contract No. W56HZV-17-D-0086, a 10-year indefinite-delivery, indefinite-quantity contract to Vigor Iron Works, LLC (Vigor). Req. for Dismissal at 2. The contract is for development, testing, production, training, fielding, and support of the MSV(L). *Id.*

Craft Bearing states that it contacted Vigor about providing bearings for the MSV(L) and was told to contact the subcontractor that would be providing the drive line system for the vessels. Resp. to Req. for Dismissal, encl. 1, Affidavit of Craft Bearing President at 1. Craft Bearing states that it contacted the drive line system subcontractor and was told that the bearings would be provided by a firm located in England. *Id.* at 2.

On December 4, 2019, Craft Bearing emailed the agency and stated that the drive line systems subcontract awarded by Vigor did not contain a Buy American requirement and as a result, the drive line systems subcontractor would not let Craft Bearing submit an offer for the bearings. Protest, attach. A, Email from Craft Bearing to Army, Dec. 4, 2019, at 1. Craft Bearing's email asserted that there had been a "serious violation of the Buy American Clause required in Federal Government Contracts." *Id.* On December 12, the agency responded, explaining that the government is not involved in, and has no purview over, the subcontractors selected by a prime contractor. *Id.*, attach. B, Email from Army to Craft Bearing, Dec. 12, 2019, at 21. On March 24, 2020, Craft Bearing filed this protest with our Office. Protest at 1.

DISCUSSION

Craft Bearing states that it is a small business with a manufacturing plant in Virginia that uses only American materials to manufacture the bearings utilized in the vessels produced under the Vigor contract. Protest at 1-2. Craft Bearing argues that Vigor and its drive line systems subcontractor refuse to allow Craft Bearing to compete for the bearings subcontract under the prime contract, and instead have awarded the subcontract to a large business that manufactures the bearings outside of the United States. *Id.* at 2, 4. Craft Bearing contends that the award of a subcontract to this other firm violates Federal Acquisition Regulation clause 52.219-9, Small Business Subcontracting Plan, and the Buy American Act requirements in Vigor's contract. *Id.* Craft Bearing argues that the agency has failed to monitor and enforce these requirements in Vigor's contract, to the detriment of Craft Bearing. *Id.* at 2-3.

The Army requests dismissal of the protest, asserting that GAO lacks jurisdiction to review a protest relating to the award of a subcontract. Req. for Dismissals at 2-3. The Army argues that because the procurement at issue concerns a subcontract awarded by Vigor, the protest is outside of our Office's bid protest jurisdiction. *Id.* We agree.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3557. Our Office reviews alleged violations of procurement laws and regulations to ensure that the statutory requirements for full and open competition are met. 31 U.S.C. § 3552(a); *Cybermedia Techs., Inc.*, B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. Under CICA, our Office has jurisdiction to resolve bid protests concerning solicitations and contract awards issued by federal agencies. 31 U.S.C. § 3551(1)(A); *Raytheon Co.*, B-415722, *et al.*, Dec. 28, 2017, 2018 CPD ¶ 56 at 4-5.

Our jurisdiction under CICA generally does not extend to awards made by prime contractors “for” the government; in the absence of a request to hear a subcontract protest by the federal agency concerned, we will not exercise jurisdiction over such protests. 31 U.S.C. § 3551(1)(A); 4 C.F.R. § 21.5(h); *NEK Advanced Secs. Grp., Inc.*, B-405270.2, B-405270.3, Oct. 3, 2011, 2011 CPD ¶ 202 at 2-3. The agency has not requested that our Office hear protests related to the award of subcontracts under this prime contract.

Our Office will exercise jurisdiction over a protest of the award of a subcontract, however, where we find that a subcontract was essentially awarded “by” the government. *Peter Vander Werff Constr., Inc.*, B-415676, Feb. 6, 2018, 2018 CPD ¶ 67 at 2; *The Panther Brands, LLC*, B-409073, Jan. 17, 2014, 2014 CPD ¶ 54 at 4-6. We have considered a subcontract procurement to be conducted “by” the government where the agency handled substantially all of the substantive aspects of the procurement and, in effect, took over the procurement, leaving to the prime contractor only the procedural aspects of the procurement, *i.e.*, issuing the subcontract solicitation and receiving proposals. *Id.*; *Saint Mary's Hosp. and Med. Ctr. of San Francisco, Cal.*, B-243061, June 24, 1991, 91-1 CPD ¶ 597 at 5-6.

The agency states that this subcontract for bearings is not a procurement by the government because the prime contractor handled all meaningful aspects of this procurement. Req. for Dismissal at 3. In its protest, Craft Bearing does not allege that the Army had any role in the selection of the successful subcontractor (or in the subcontractor’s second-tier selection decisions). Further, in response to the agency’s dismissal request, Craft Bearing does not dispute that Vigor and its drive line systems subcontractor awarded the subcontract for bearings. As the subcontract was not awarded by the government as contemplated in our Office’s prior decisions, our Office will not review Craft Bearing’s claim that it was not allowed to compete for the subcontract. *Peter Vander Werff Constr., Inc., supra*.

Craft Bearing also asserts that the contracting officer refuses to get involved and enforce the contract provisions in Vigor’s prime contract. The agency argues this protest allegation raises matters of contract administration. Req. for Dismissal at 1. We agree. We generally do not review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims, absent exceptions not present here. 4 C.F.R. § 21.5(a). Here, whether or not Vigor performs in accordance with certain clauses or provisions contained in the contract is a matter of contract administration which we will not review. *Id.*; *Red River Waste Sols., Inc.*, B-414367, Mar. 21, 2017, 2017 CPD ¶ 97 at 7.

The agency also argues the protest is untimely. Req. for Dismissal at 3-4. Under our Bid Protest Regulations, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar 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). The agency contends that Craft Bearing knew the basis for its protest no later than

December 12, when the contracting officer replied to its December 4 email stating that the government is not involved in the award of subcontracts. Req. for Dismissal at 3. As Craft Bearing did not file its protest with our Office until March 24, the agency asserts that this protest is untimely. *Id.* at 1, 3. Craft Bearing has asked our Office to address the merits of its protest regardless of timeliness for good cause or because it raises a significant issue. Resp. to Req. for Dismissal at 2.

Our Office may consider the merits of an untimely protest where good cause is shown or where the protest raises a significant issue of widespread interest to the procurement community. 4 C.F.R. § 21.2(c). However, where, as here, our Office finds that we lack jurisdiction over the issues raised, we would not consider the protest even if we determined it to be timely. *See NEK Advanced Secs. Grp., Inc., supra* at 1 n.1. Because our Office lacks jurisdiction over Craft Bearing's protest, we will not address the timeliness of this protest, and therefore cannot consider Craft Bearing's request concerning the good cause or significant issue exceptions to the timeliness requirements.

The protest is dismissed.

Thomas H. Armstrong
General Counsel