Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: AVW Electronic Systems, Inc.

File: B-252399

Date: May 17, 1993

Teresa R. Wallette for the protester.
Linda L. Lewis, Esq., and Kathryn Good, Esq., Department of Transportation, for the agency.
Aldo A. Benejam, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester which is not eligible for award of contract under section 8(a) of the Small Business Act lacks the requisite direct economic interest to be considered an "interested party" under General Accounting Office's Bid Protest Regulations to challenge the award to an eligible 8(a) firm, since protester would not be eligible for award even if its protest were sustained.

DECISION

AVW Electronic Systems, Inc. protests the award of a contract to the New Bedford Panoramex Corporation (NBP) under solicitation No. DTFA01-93-Y-01022, issued by the Federal Aviation Administration (FAA), Department of Transportation, pursuant to section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. III 1991). The contractor is to provide FAA with precision approach path indicator (PAPI) systems.

We dismiss the protest.

AVW has been providing PAPI systems to FAA pursuant to a contract awarded to the firm under the 8(a) program in September of 1988. Although AVW graduated from the 8(a) program on October 14, 1990, pursuant to various modifications to AVW's original contract, the firm will continue to provide PAPI systems to FAA through 1994. FAA awarded the contract at issue here to NBP on January 8, 1993; NBP graduated from the 8(a) program on January 10.

AVW contends that the award to NBP, just 2 days prior to the firm's graduation from the program, was improper. The protester, which is no longer eligible for award under the 8(a) program, also maintains that the PAPI procurement should be

removed from the 8(a) program and that a "non-competitive contract" should be awarded to AVW. In this connection, the protester argues that its work under the prior contract constituted such a significant portion of its total business (approximately 45 percent), that the follow-on award to NBP would have an "absolute adverse impact" on AVW.

Under our Bid Protest Regulations, a protester must have a direct economic interest which is affected by the award of a contract in order to be considered an interested party. 4 C.F.R. § 21.0(a) (1993). Applying that standard here, AVW is not an interested party to challenge the award to NBP, since, even if AVW's protest were sustained, AVW would not be eligible for award because it is no longer an 8(a) firm. E.L. Hamm & Assocs., Inc.--Recon., B-231444.2, Aug. 19, 1988, 88-2 CPD ¶ 160. Moreover, FAA states that it does not intend to remove the procurement from the 8(a) program. Thus, even if we were to find that the award to NBP was improper, and sustained AVW's protest, the agency would make award to another eligible 8(a) firm, not AVW.[1]

In any case, we see no basis to conclude that FAA's action in contracting with NBP shortly before NBP's scheduled graduation from the 8(a) program was improper. In order to be awarded a contract under the 8(a) program, a firm must be an eligible, active participant on the date of award. See Digital Equip. Corp., B-245910, Jan. 13, 1992, 92-1 CPD ¶ 58. Here, the record shows that as early as December of 1988, the Small Business Administration, which is vested with determining whether a firm is eligible under the program, had established January 10, 1993, as the date when NBP would graduate from the 8(a) program. We therefore see nothing improper in making award to NBP on January 8, while the firm was still an eligible, active participant in the program.

The fact that AVW's ineligibility for the contract may have a significant effect on the firm's total business is not a basis for protest. There is no legal requirement that a procurement be removed from the 8(a) program to allow the

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[1]Throughout its submissions to our Office, the protester alludes to the requirement for awarding contracts on the basis of competition among 8(a) firms, where the contract amount thresholds and other statutory conditions are met. See 13 C.F.R. § 124.311 (1992). Even if we were to agree with the protester that the competition requirement applies here, since AVW is no longer an 8(a) firm and since FAA does not intend to withdraw the PAPI requirement from the section 8(a) program, AVW would not be eligible to compete for award.

possible award to the incumbent, a former 8(a) firm. M&H Bldg. Servs., Inc., B-232624.2, Nov. 29, 1988, 88-2 CPD ¶ 533. The protester's arguments, therefore, that FAA should remove the procurement from the 8(a) program, or that FAA should conduct the procurement under the agency's "Standardization Program," in order to overcome AVW's ineligibility for award under the section 8(a) program, are without merit.

The protester also contends that rather than awarding a new contract to NBP, FAA should exercise options remaining on AVW's current contract for PAPI equipment and services, or modify its contract to include the systems being acquired from NBP. It is not improper to exercise existing options in 8(a) contracts after an 8(a) firm has lost its 8(a) status. See 13 C.F.R. § 124.318(b); Acumenics Research and Tech., Inc.--Contract Extension, B-224702, Aug. 5, 1987, 87-2 CPD ¶ 128. A contracting agency is not required, however, to exercise an option under any circumstances. See Federal Acquisition Regulation §§ 17.201, 17.207. We will not consider an incumbent contractor's allegation that an option should be exercised under an existing contract, even when bad faith by the agency is alleged, since the decision whether to exercise the option is a matter of contract administration outside the scope of our bid protest function. Air Mechanical Inc., B-216097, Aug. 29, 1984, 84-2 CPD ¶ 240; Walmac, Inc., B-244741, Oct. 22, 1991, 91-2 CPD ¶ 358.

The protest is dismissed.

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