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Decision

Matter of: Prudential Protective Services, LLC

File: B-418869

Date: August 13, 2020

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DIGEST

Protest challenging agency's issuance of a noncompetitive task order under a Federal Supply Schedule contract is dismissed as untimely where the protest was filed more than 10 days after the notice that formed the basis of its protest was posted to the official governmentwide point of entry.

DECISION

Prudential Protective Services, LLC (PPS), of Chicago, Illinois, protests the issuance of a short-term, sole-source task order to North American Security, Inc. (NAS), of Carson, California, issued by the Department of Commerce, United States Census Bureau, for protective security officer services at the National Processing Center (NPC) located in Jeffersonville, Indiana. PPS argues that the Census Bureau's decision to issue the task order to NAS on a sole-source basis was unreasonable.

We dismiss the protest as untimely.

BACKGROUND

On April 1, 2020, PPS protested with our Office the issuance of a task order to NAS under request for quotations (RFQ) No. 1333LC19Q00000015, issued by the Census Bureau for the management, supervision, manpower, equipment and supplies necessary to provide protective security officer services for the Census Bureau's

National Processing Center. Protest at 5. This protest was docketed as B-418627. On April 9, 2020, the agency indicated it intended to take corrective action by terminating NAS's task order and re-competing the requirement which would include, at a minimum, preparing and issuing a new competitive solicitation. *Prudential Protective Services, LLC*, B-418627, Apr. 16, 2020 (unpublished decision). As a result, the protest was dismissed as academic on April 16. *Id.*

After the protest was dismissed, between April and June, PPS and its counsel contacted the agency on several occasions to inquire about the status of the corrective action, and in response, the agency indicated that a new competitive solicitation would be issued. Protest at 5-6; *id.*, exh. 1, Communications between PPS and Agency. During this period, on May 29, the contracting officer prepared a limited sources justification to issue a short-term, sole-source task order to NAS with a period of performance from June 1, 2020 through December 31, 2020.¹ Protest, exh. 2, Limited Sources Justification at 1. The justification stated that the task order was necessary to provide the agency adequate and reasonable time to implement its corrective action in response to the earlier protest (B-418627). *Id.* at 1, 3. The agency also stated that the services to be provided by NAS were essential to continue critical operations at the facilities without any lapse of armed guard services, and that NAS was the only source capable of providing the services at the level required by the agency. *Id.*

The agency issued the short-term, sole-source task order to NAS on June 10. On June 15, the agency published a notice on the beta.SAM.gov website. This notice indicated that a task order had been issued to NAS on June 1.² The limited sources justification supporting the issuance of the task order was also posted with the notice. Agency Req. for Dismissal at 3; *id.*, exh. 1, Agency Posting on beta.SAM.gov.

On June 29, PPS filed this protest with our Office.

DISCUSSION

The Census Bureau requests we dismiss the protest as untimely, arguing the protest was filed more than 10 calendar days after the protester knew or should have known the basis for its protest. The agency asserts that it posted the limited sources justification to the official governmentwide point of entry (GPE) website at beta.SAM.gov

¹ Orders placed under the General Services Administration's (GSA) Federal Supply Schedule (FSS) are exempt from the competition requirements of Federal Acquisition Regulation (FAR) part 6. FAR 8.405-6. An ordering activity, however, must justify its actions in restricting competition on orders exceeding the micro-purchase threshold. FAR 8.405-6(a).

² The notice posted on the beta.SAM.gov website incorrectly identifies the task order issuance date as June 1. The agency states that the actual issuance date was June 10. Agency Req. for Dismissal, exh. 1, Agency Posting on beta.SAM.gov at 2.

on June 15.³ Because PPS did not file its protest until June 29, the agency argues that the protest is untimely because it was filed more than 10 days after the protester was given constructive notice by the posting on beta.SAM.gov. Agency Req. for Dismissal at 3-4.

PPS contends that its protest is timely because the agency failed to follow the notice requirements for the limited sources justification under FAR 8.405-6(a)(2), which requires the agency not only to post the justification to the GPE but also on the website of the ordering activity. Protest at 3, 7; Protester's Response to Req. for Dismissal (Protester's Response) at 2. The protester argues that the agency's defective notification was insufficient to place PPS on constructive notice of the sole-source award. Protester's Response at 4. In this regard, the protester points out that all previous notices related to this procurement were posted on GSA's e-Buy website-- which PPS asserts that it was diligently monitoring. As a result, the protester argues it was unreasonable for the agency to post notice of the limited sources justification only to the beta.SAM.gov website, and that PPS learned of the notice "only by chance."⁴ *Id.*

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, 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). Publication on the GPE (formerly www.fbo.gov, now beta.SAM.gov)--which has been expressly designated by statute and regulation as the official public medium for providing notice of contracting actions by federal agencies--constitutes constructive notice of contracting actions. *AGMA Sec. Serv., Inc.*, B-418647, Jun. 24, 2020, 2020 CPD ¶ 223 at 3-4; *CBMC, Inc.*, B-295586, Jan. 6, 2005, 2005 CPD ¶ 2 at 2. The doctrine of constructive notice creates a presumption of notice in law that cannot be rebutted. *Boswell & Dunlap, LLP*, B-416623, Oct. 10, 2018, 2018 CPD ¶ 351 at 3; *Worldwide Language Res., Inc.; SOS Int'l Ltd.*, B-296984 *et al.*, Nov. 14, 2005, 2005 CPD ¶ 206 at 9. By

³ The GPE provides a single consolidated site where government business opportunities valued above \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. FAR 2.101. Although the FAR currently states the GPE is located at www.fbo.gov, the beta.SAM.gov is the official government successor website to www.fbo.gov. <https://beta.sam.gov> (last visited July 31, 2020) ("This website has officially replaced FBO.gov.").

⁴ GSA offers an on-line shopping service called "GSA Advantage" through which ordering activities may place orders against the FSS. FAR 8.402(c)(1). GSA's "e-Buy" is GSA's electronic request for quotation (RFQ) system and is part of a suite of on-line tools that complement GSA Advantage. FAR 8.402(d)(1). The e-buy system allows ordering activities to "post requirements, obtain quotes, and issue orders electronically." *Id.* Posting an RFQ on GSA e-Buy is "one medium for providing fair notice to all schedule contractors offering such supplies and services" *Id.*

definition the doctrine imputes knowledge to a party without regard to the party's actual knowledge of the matter at issue. *Boswell & Dunlap, LLP, supra; Worldwide Language Res., Inc.; SOS Int'l Ltd., supra.*

The Census Bureau asserts that PPS's protest is untimely because the protester had constructive notice of the agency's issuance of the sole-source task order to NAS on June 15, when the agency posted the limited sources justification on the GPE. Here, the parties do not dispute that the agency properly provided notice of its limited sources justification and issuance of a sole-source order on the GPE. Rather, the protester complains that the agency's notice was insufficient under FAR 8.405-6(a)(2), because the notice was also required to be posted on the agency's website. Protester's Response at 2-3.

Section 8.405-6(a)(2) of the FAR requires that, within 14 days of placing an FSS order supported by a limited sources justification--such as the one at issue here--the ordering activity is required to publish the notice in accordance with FAR 5.301 and post the justification at the GPE and on "the Web site of the ordering activity agency."⁵ The protester's arguments are premised on the mistaken assumption that because the agency used GSA e-Buy for the NPC protective security officer services procurement, GSA e-Buy is essentially the equivalent, or should be treated as the ordering activity's website, for purposes of posting the justification under FAR 8.405-6(a)(2). See Protester's Response at 3-4. We disagree.

As discussed above, GSA e-Buy is GSA's electronic RFQ system and is one part of a suite of on-line tools that complement GSA's on-line shopping service. Here, there is no dispute that the ordering activity for this FSS procurement is the Census Bureau. Because GSA e-Buy is not the website of the "ordering activity"--in this instance, the Census Bureau--we find that there is no requirement, under the FAR, that the limited sources justification be posted on GSA e-Buy, in addition to the GPE. FAR 8.405-6(a)(2)(B).

In the protester's view, by using the GSA e-Buy portal when purchasing from the FSS in the past, the Census Bureau transformed the e-Buy portal into the ordering activity's website, such that the FAR would require posting of the limited sources justification to that portal, as well as to the GPE.⁶ Protester's Response at 2. A plain reading of the

⁵ Relevant here, FAR 5.301 simply requires the contracting officer to synopsise, through the GPE, any FSS order (over the simplified acquisition threshold) that is supported by a limited sources justification. FAR 5.301(a)(2).

⁶ The Census Bureau represents that, as the ordering activity, it does not have its own separate agency website on which it posts notices of contracting actions. Agency Req. for Dismissal at 5. As such, the agency asserts that it met the requirements of the FAR when it posted the limited sources justification to only the GPE, since the secondary site listed in the FAR did not exist. We express no view on this position, because, as

language of the FAR, however, does not provide any basis to support the protester's contentions. See FAR 8.405-6(a)(2)(B).

Finally, as discussed above, the doctrine of constructive notice creates a presumption of notice in law that cannot be rebutted because, by definition, the doctrine imputes knowledge to a party without regard to the party's actual knowledge of the matter at issue. *Boswell & Dunlap, LLP, supra*; *Worldwide Language Res., Inc.*; *SOS Int'l Ltd., supra*. Our Office has consistently explained that protesters are charged with constructive notice of the contents of procurement actions published on the GPE. *Boswell & Dunlap, LLP, supra* at 3. Because PPS is presumed to have known about the limited sources justification when the agency posted it on the GPE, we conclude that the protester was required to challenge the agency's action no later than 10 calendar days after the posting on the GPE on June 15--in other words, by June 25. 4 C.F.R. § 21.2(a)(2).

Similarly, we are unpersuaded by the protester's argument that because the agency had previously posted notices related to this procurement on the GSA e-Buy website, it was unreasonable here for the agency to only post notice of the limited sources justification to the GPE. Again, notwithstanding the agency's prior actions, PPS is charged with constructive notice of the contents of the agency's procurement action published on the GPE on June 15. Because the protester did not file its protest until June 29--more than 10 days after June 15--the protest is untimely filed.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

discussed below, for timeliness purposes, PPS had constructive notice of the basis for its protest when the justification was posted to the GPE.