



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: DGCI Corporation

File: B-422316.2

Date: May 6, 2024

Lawrence J. Sklute, Esq., Sklute & Associates, for the protester.
Steven M. Sosko, Esq., Defense Logistics Agency, for the agency.
Michael P. Price, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's award of a sole-source contract is dismissed for failing to state a valid basis of protest where the protester's arguments are premised on factual inaccuracies regarding the contract award.

DECISION

DGCI Corporation, a small business of Tysons, Virginia, protests the Defense Logistics Agency's (DLA) award of a sole-source contract for aviation turbine fuel to Renos Company, of Erbil, Iraq. The protester contends that that sole-source award and the agency's justification for the award are unreasonable and a "legal nullity."

We dismiss the protest because, as filed with our Office, it does not establish a valid basis for challenging the agency's action.

On January 18, 2024, DLA issued request for quotations (RFQ) No. SPE605-24-Q-0290 pursuant to Federal Acquisition Regulation (FAR) parts 12 and 13, seeking quotations for aviation turbine fuel at Al Asad Air Base, located in western Iraq. Req. for Dismissal, encl. 1, RFQ at 1-2. The RFQ contemplated the award of a fixed-price contract with a 2-month period of performance. *Id.* at 1. The RFQ further advised that the agency intended to make an award on a lowest-price, technically acceptable basis, with a single technical evaluation factor identified. *Id.* at 1-2.

DGCI Corporation filed a protest with our Office on January 26, alleging the terms of the solicitation did not reflect the actual and legitimate needs of the government. *DGCI Corporation*, B-422316, Feb. 23, 2024 (unpublished decision) at 1. DLA subsequently filed a request for dismissal of that protest on February 13, explaining that the

challenged solicitation had been canceled on February 1. *Id.* In objecting to the agency's request for dismissal, the protester argued that cancellation of the solicitation was "a legal nullity and pretext[.]" because the agency had "already awarded Renos [Company] a competitive contract on January 30 under [the] competitive, defective solicitation" and then "attempted to convert" that contract into a sole-source award. Protest at 3. Using the same reasoning--that the agency had already awarded Renos Company a contract pursuant to the competitive solicitation--the protester argued that "[t]he attempted sole source award is also a legal nullity and pretext." *Id.* The protester also separately filed as a new protest a challenge to the sole-source award that asserted the same arguments as raised in the objection to the corrective action.¹

Our Office dismissed as academic the initial protest of the terms of the solicitation on February 23 because the agency had canceled the underlying solicitation; however, we noted in our dismissal decision that because the protester also had filed a separate protest challenging the agency's cancellation of the solicitation and sole-source award to Renos Company, we would consider that protest. *DGCI Corporation, supra* at 1-2.

In its protest, DGCI Corporation argues that both DLA's award of the sole-source contract to Renos Company and its cancellation of the initial RFQ were improper, as each action was "a legal nullity." Protest at 10. With respect to the award of the sole-source contract, the protester contends that the agency "lacked a valid [j]ustification and [a]pproval [(J&A)] required by FAR 6.303-1, 6.303-2 and 6.304 to support a sole source award under FAR 6.302-2." *Id.* The protester also maintains that the agency lacked "an unusual and compelling urgent need" for the sole-source contract because of "the obvious fact that there was an existing contract resulting from a competitively issue[d] solicitation." *Id.* The protester essentially argues that the agency made a sole-source award to Renos Company using the competitively issued solicitation and therefore the cancellation of the solicitation and the sole-source award were both unreasonable and improper.

DLA requests our Office dismiss the protest, contending that the protest fails to state a valid basis of protest and is otherwise untimely. Req. for Dismissal at 3-5. In this regard, the agency argues that in addition to being speculative, the basis of the protester's argument--that the agency awarded Renos Company a sole-source contract pursuant to the previously issued competitive solicitation--is factually inaccurate, because the sole-source contract was instead executed by issuing an interim or "bridge" contract to Renos Company. *Id.* at 4. The agency additionally argues that the protester's challenge to the J&A documentation is insufficient because the protester does not offer any evidence or explanation to support this claim beyond conclusory statements. *Id.*

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving

¹ The separate protest, which we docketed as B-422316.2, is the exact same document as the protester's objection to the agency's request for dismissal.

bid protests is to ensure that the statutory requirements for full and open competition are met. *Cybermedia Techs., Inc.*, B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

Here, based on our review of the record, we agree with DLA that its sole-source award to Renos Company was not made pursuant to the competitive RFQ No. SPE605-24-Q-0290 as alleged by the protester. Rather, the record reflects that the agency made this award using a separate, bridge contract vehicle and justified its decision with a memorandum and post-award J&A documentation.² See Req. for Dismissal, encl. 2, DLA Bridge Contract Memorandum; Req. for Dismissal, encl. 8, DLA J&A Documentation. Specifically, the bridge contract memorandum, electronically signed by the contracting officer and head of contracting activity on January 30, provided that the bridge contract would have a period of performance of March 1, 2024, through April 30, 2024, and was necessary to ensure continued access to aviation turbine fuel at Al Asad Air Base. Req. for Dismissal, encl. 2, DLA Bridge Contract Memorandum at 1. The memorandum unequivocally stated that because of the protest filed against the competitive RFQ, “[c]ontract number SPE605-24-P-9526 for [Al Asad Air Base] will be issued to Renos [Company] to support [Al Asad Air Base] so that there is no gap” in fuel deliveries. *Id.* at 2.

DLA reiterated its position in the J&A documentation, explaining that due to protests of both its long term procurement (3-year procurement) for aviation turbine fuel and short term procurements for fuel in the interim, as well as the additional fact that Renos Company had successfully been performing under existing contract No. SPE605-24-P-9517, a bridge contract awarded pursuant to the unusual and compelling urgency contract authority of FAR subsection 6.302-2 was appropriate to ensure fuel supply to the Al Asad Air Base was not interrupted.³ Req. for Dismissal, encl. 8, DLA J&A Documentation at 4-5. The agency maintains that if the fuel supply to the air base was interrupted, serious injury to the government would result, because [DELETED].

² The agency explains that the J&A documentation was prepared after contract award in accordance with FAR subsection 6.302-2. Req. for Dismissal at 3.

³ DLA also cites the authority of Defense Federal Acquisition Regulation Supplement (DFARS) subsection 206.302-2(b)(ii)(B), which permits the use of other than full and open competition based on an unusual and compelling urgency where essential equipment or repair is needed at once to “[p]erform the operational mission of an aircraft.” DFARS 206.302-2.

Accordingly, to the extent DGCI Corporation argues that cancellation of the initial solicitation was improper and a “legal nullity” because DLA had already awarded a contract pursuant to this solicitation, we conclude this argument fails to state a valid basis of protest. The record demonstrates that the agency instead executed a bridge contract with Renos Company separate from the competitively issued solicitation, and this argument therefore lacks a sufficient factual basis. For the same reason, we conclude the protester’s argument that the sole-source award was a “legal nullity” also fails to state a valid basis of protest--again, the agency executed a bridge contract with Renos Company and did not award that contract under the competitively issued RFQ. These arguments are dismissed.

To the extent DGCI Corporation challenges the sufficiency of DLA’s J&A documentation pursuant to FAR subsections 6.303-1, 6.303-2, and 6.304, we also conclude the argument fails to state a valid basis of protest. The protester makes the conclusory argument that the agency “lacked a valid [J&A],” but does not include any explanation as to why the J&A was invalid, other than its contention that the sole-source award was a legal nullity, which, as explained above, is factually incorrect. Protest at 10.

Moreover, DLA produced the J&A documentation with its request for dismissal filed with our Office on February 29. Therefore, to the extent DGCI Corporation could have timely raised additional challenges to the sufficiency of the agency’s J&A documentation, it was required to file those challenges with our Office no later than close of business on March 11 but the protester made no such challenges. 4 C.F.R. § 21.2(a)(2) (protest grounds other than those based on solicitation improprieties “shall be filed not later than 10 days after the basis of protest is known or should have been known”); see *Avionic Instruments, LLC*, B-418604.3, May 5, 2021, 2021 CPD ¶ 196 at 6 (explaining that where an agency produces documents that may serve as the basis of additional protest grounds, a protester has 10 days from the time of receipt of those documents to timely raise the additional protest grounds). This protest ground is also dismissed.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel