



Decision

Matter of: BBS Company

File: B-423675

Date: August 1, 2025

Ik T. Kim, Esq., for the protester.
John C. Degnan, Esq., and Major Brandon P. Mark, Department of the Army, for the agency.
Hannah G. Barnes, Esq., and April Y. Shields, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's exclusion of the protester's proposal is dismissed where GAO does not have jurisdiction to consider protests of procurements conducted by the Army and Air Force Exchange Service because it is not a federal agency.

DECISION

BBS Company of Pyeongtaek-si, Gyeonggi-do, South Korea, protests the exclusion of its proposal from consideration for award under solicitation No. KO-24-22801, issued by the Army and Air Force Exchange Service (AAFES) for barber shop services. The protester contends that the AAFES improperly denied BBS the opportunity to submit a best and final offer and that the AAFES unreasonably justified this decision with a non-responsibility determination.

We dismiss the protest.

On December 31, 2024, the AAFES issued the solicitation for barber shop services at Osan Air Base and Camp Yongin in South Korea. Protest exh. 5, Solicitation amend. 1 at 78.^{1,2} The solicitation explained that the AAFES operates retail facilities on military

¹ The protest exhibits are contained within one Adobe pdf, and page citations are to the pdf page numbers.

² BBS asserts that it currently operates a barber shop on Osan Air Base. Protest at 5. BBS further asserts that it did not receive the initial solicitation and reached out to the
(continued...)

installations and specifically advised that: the AAFES is “an instrumentality of the United States Government,” AAFES contracts “do not obligate appropriated funds of the United States,” AAFES procurement policy is “established by applicable directives and instructions promulgated by the U.S. Department of Defense,” and the Federal Acquisition Regulation does not apply to the AAFES. Solicitation amend. 1 at 78.

On January 31, 2025, the protester submitted its proposal. Protest at 5. On March 6, the AAFES issued a best and final offer request to other offerors, but not to BBS. *Id.* at 6. On March 7, the protester received a non-responsibility determination from AAFES formally excluding BBS from further consideration for award. *Id.*; Protest exh. 1, Non-Responsibility Letter at 3-5. Over the next few months, BBS filed multiple complaints with the agency, and on June 18, the AAFES contracting officer formally affirmed the non-responsibility determination and BBS’s exclusion from consideration for award. Protest exh. 2, Resp. to BBS at 7-9. On June 26, this protest followed.

On July 1, the Army requested that the protest be dismissed on the basis that our Office lacks jurisdiction to review a procurement conducted by the AAFES. Req. for Dismissal at 3. The Army first explains that it did not issue the solicitation at issue. *Id.* at 2. The Army then argues that the AAFES is a nonappropriated fund instrumentality (NAFI) and not a federal agency, and that our Office should consequently dismiss this protest. *Id.* at 4. The protester responds that our Office is not precluded from exercising jurisdiction over this protest, pointing to the “clear connection” between the AAFES and the Department of Defense, a federal agency. Resp. to Req. for Dismissal at 3.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act (CICA), 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Qwest Gov’t Servs., Inc. d/b/a CenturyLink QGS*, B-420095, Oct. 6, 2021, 2021 CPD ¶ 337 at 2. As relevant here, CICA defines a protest to be a written objection by an interested party to a solicitation or other request by a federal agency for bids or proposals for a contract for the procurement of property or services, or an award or proposed award of such a contract. 31 U.S.C. §§ 3551(1), 3553. Our threshold jurisdictional concern is whether the procurement at issue is being conducted by a federal agency. 4 C.F.R. § 21.5(g); *Americable Int’l, Inc.*, B-251614, B-251615, Apr. 20, 1993, 93-1 CPD ¶ 336 at 2.

AAFES to inquire about its exclusion. *Id.*; Protest exh. 6, BBS Proposal and Supporting Documents at 127. The protester states that the AAFES explained BBS had been excluded due to a potential conflict of interest involving a BBS employee, while BBS argued that this potential conflict of interest had been resolved in a prior AAFES internal investigation concluding that the employee at issue did not pose a conflict. Protest at 5. On January 13, the AAFES amended the solicitation, extending the due date for proposals. Protest exh. 6, BBS Proposal and Supporting Documents at 125. All citations are to this amended solicitation.

CICA adopted the definition of a federal agency set forth in 40 U.S.C. § 102, defining a federal agency as “an executive agency or an establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol, and any activities under the direction of the Architect of the Capitol).” 40 U.S.C. § 102(5); see 31 U.S.C. § 3551(3). An executive agency is “an executive department or independent establishment in the executive branch of the Government,” or “a wholly owned Government corporation.” 40 U.S.C. § 102(4).

As noted above, the solicitation states that AAFES is an instrumentality of the United States government, and that AAFES contracts do not obligate appropriated funds of the United States. Solicitation amend. 1 at 78. More specifically, the AAFES is a “joint command of the Army and Air Force,” and a NAFI is defined as a “[f]ederal [g]overnment instrumentality established to generate and administer nonappropriated funds for programs and services contributing to the mental and physical well-being of personnel.” 32 C.F.R. § 842.115(a), (d). Notably, the AAFES is not defined as a federal agency. The protester has not alleged or made any showing that the AAFES is a federal agency; rather, BBS acknowledges that the AAFES is a NAFI. Resp. to Req. for Dismissal at 2.

The Army also explains that it is not a party to the contract action and is not the procuring agency, as it did not issue the solicitation. Req. for Dismissal at 2-3. The protester does not challenge this explanation. The protester nevertheless argues that, although the AAFES is a NAFI, it operates under the Department of Defense, a federal agency, and therefore possesses “the requisite nexus to a federal agency for purposes of GAO jurisdiction.” Resp. to Req. for Dismissal at 2. We do not find this claim to be factually or legally persuasive.

Our Office has previously found that NAFIs—including AAFES, specifically—do not meet the statutory definition of federal agencies and are therefore beyond the jurisdiction of our bid protest forum. *Liquipharm, Inc.--Recon.*, B-245069.2, Aug. 28, 1991, 91-2 CPD ¶ 212 at 1 (finding that the AAFES “is established as and has long been recognized as a nonappropriated fund activity of the Department of Defense” and is therefore not a federal agency); *Americable Int’l, Inc.*, *supra* at 3; *DSV GmbH*, B-253724, June 16, 1993, 93-1 CPD ¶ 468 at 1 (rejecting argument that a NAFI “should be viewed as a federal agency because it is a unit of the Army” as inconsistent with how “that term is used in law authorizing our bid protest review role”); *but see Info. Experts, Inc.*, B-413887, B-413887.2, Dec. 30, 2016, 2017 CPD ¶ 16 at 5 (finding that our Office has jurisdiction to hear protests of Consumer Financial Protection Bureau procurements because, although it is funded by nonappropriated funds, that agency’s statutory authority “expressly provides” that it “shall be considered an Executive agency”). Despite the protester’s claims, nothing in the record here establishes that the AAFES meets the CICA definition of a federal agency subject to our bid protest jurisdiction. In

sum, the protester has failed to demonstrate that our Office has jurisdiction over the bid protest.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel