



Decision

Matter of: Eagle Collaborative Computing Services, Inc.

File: B-401043.3

Date: January 28, 2011

Jason M. Pelt, Esq., Goodall & Pelt, P.C., for the protester.
Linda Fallowfield, Esq., Blythe I. Rodgers, Esq., and William R. Taylor, Esq.,
Department of Housing and Urban Development; and John W. Klein, Esq., and
Meagan K. Guerzon, Esq., Small Business Administration, for the agencies.
Wesley I. Dunn, Esq., Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly awarded a sole-source contract under the Small Business Administration's section 8(a) program where award was consistent with section 8(a) sole-source requirements.

DECISION

Eagle Collaborative Computing Services, Inc. (ECCS), of Stafford, Virginia, a small business, protests the award of a sole-source contract to Deque Systems, Inc. (Deque), of Reston, Virginia, by the Department of Housing and Urban Development (HUD) for Rehabilitation Act support and training services under the Small Business Administration's (SBA) section 8(a) program. ECCS argues that HUD did not comply with the sole-source procedures applicable to the section 8(a) program in the Federal Acquisition Regulation (FAR) when it awarded the contract to Deque.

We deny the protest.

BACKGROUND

On July 15, 2008, HUD issued request for quotations (RFQ) No. R-OPC-23323, using full and open competition, seeking assistive technology support services and

maintenance under sections 504 and 508 of the Rehabilitation Act,¹ 29 U.S.C. §§ 794, 794d (2006). Agency Report (AR), Tab 1, RFQ No. R-OPC-23323, at 1, 7. HUD awarded a contract pursuant to this solicitation on January 11, 2009, to Peniel Solutions, LLC (Peniel). AR at 2. ECCS filed a bid protest with GAO regarding this award on January 22, 2009. *Id.* at 3. GAO dismissed the protest after HUD stated that it would take voluntary corrective action. Eagle Collaborative Computing Servs., Inc., B-401043, Feb. 6, 2009.

HUD again awarded the contract to Peniel, and ECCS again protested the award. AR at 2. Before GAO issued a decision on this protest, HUD stated that it would take corrective action regarding the second award to Peniel. In its corrective action letter, HUD stated that the procurement would be handled by the General Services Administration (GSA) as a GSA-assisted acquisition, and that ECCS would have an opportunity for its proposal to be considered. E-mail from HUD Counsel to GAO, Aug. 3, 2009, at 1. Accordingly, GAO dismissed the protest as academic. Eagle Collaborative Computing Servs., Inc., B-401043.2, Aug. 10, 2009.

Subsequently, GSA's Federal Systems Integration and Management Center (FEDSIM) determined that ECCS would not be able to submit a proposal on a FEDSIM-administered contract. AR, Tab 3, Declaration of Contracting Officer for R-OPC-23323, at 1. After several attempts to complete this procurement, HUD decided to address its immediate need for services under section 508 of the Rehabilitation Act. HUD submitted a proposal to the SBA on September 16, 2010, seeking to place a sole-source contract under the SBA's section 8(a) program² with Deque. AR at 5; AR, Tab 6, Letter from Contracting Specialist to the SBA, Sept. 16, 2010, at 1. The estimated period of performance for the contract was 6 months, at a value of approximately \$75,048. AR, Tab 6, Letter from HUD Contracting Specialist to SBA, Sept. 16, 2010, at 1.

When the SBA did not reply to this letter within 2 days, HUD assumed that the SBA had accepted the offer and, accordingly, awarded the contract to Deque in the amount of \$75,048 on September 30, 2010. AR at 4; AR, Tab 7, Order No. S0QACCA0049, at 1. ECCS learned of this award on October 25, 2010. Protest at 2. ECCS filed its protest of this award with GAO on November 3, 2010.

¹ These provisions require federal agencies to ensure that disabled employees have access to adaptive computer equipment, and to establish standards for the processing and presentation of information to disabled employees and customers. 29 U.S.C. §§ 794(a), 794d(a).

² Section 8(a) of the Small Business Act authorizes the SBA to contract with other government agencies, and to arrange for the performance of those contracts via subcontracts awarded to socially and economically disadvantaged businesses. 15 U.S.C. § 637 (2006).

DISCUSSION

ECCS first argues that HUD's award to Deque does not comply with the voluntary corrective action that HUD agreed to take following the second award to Peniel. In addition, ECCS argues that the most recent award violates the guidelines for sole-source section 8(a) awards under the FAR. Protest at 2.

The protester's first allegation, by itself, is not a valid basis of protest. Our bid protest jurisdiction is limited to deciding protests "concerning an alleged violation of a procurement statute or regulation." 31 U.S.C. § 3552(a) (2006). Thus, we will not consider an argument regarding compliance with a corrective action letter, except to the extent the protester asserts that an agency's alleged deviation from its proposed corrective action resulted in a prejudicial violation of procurement laws or regulations. Benchmade Knife Co., B-299366.3, B-299366.4, July 16, 2007, 2007 CPD ¶ 137 at 3 n.4; see also American Mktg. Assocs., Inc., B-274454, May 14, 1997, 97-1 CPD ¶ 183 at 2-3. The allegation here, that HUD violated the corrective action letter by failing to award a contract through GSA, does not show a violation of procurement laws or regulations. See Protest at 2. Accordingly, we dismiss this ground of protest.

Next, ECCS argues that HUD's award to Deque was not properly issued as a sole-source section 8(a) award under the FAR. ECCS argues generally that HUD's use of non-competitive procedures to award the contract to Deque was improper, and that the SBA did not properly accept HUD's contract offer before HUD awarded the contract.

The Competition in Contracting Act of 1984 (CICA) allows executive agencies to use non-competitive procurement procedures where "a statute expressly authorizes . . . that the procurement be made through another executive agency". 41 U.S.C. § 253(c)(5) (2006). In this regard, section 8(a) of the Small Business Act expressly authorizes the SBA to enter into contracts with other agencies "to furnish . . . services . . . to the Government" through subcontracts to disadvantaged small business concerns. 15 U.S.C. § 637(a), (b) (2006). Accordingly, the FAR expressly authorizes agencies to use non-competitive procedures pursuant to CICA when making "sole source awards under the [section] 8(a) program." FAR § 6.302-5(b)(4).

The FAR then specifies the circumstances in which a sole-source award under section 8(a) is appropriate. Agencies must use competitive procedures for section 8(a) contract awards when: (1) there is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that an award can be made at fair market price, and (2) the anticipated total value of the contract, including

options, will exceed \$4 million.³ FAR § 19.805-1(a). Since HUD's award to Deque was for \$75,048--well below the \$4 million competitive threshold--HUD was not required to use competitive procedures here.

Furthermore, despite the protester's contentions, the applicable regulations do not require HUD to obtain the SBA's formal acceptance of the contract offer prior to directly awarding the contract to Deque. Generally, before a procuring agency may award an 8(a) sole-source contract, it must submit an offer letter for the procurement to the SBA, and the SBA must accept it. See 13 C.F.R. § 124.502(a). However, section 8(a) regulations provide that when the value of a proposed contract falls below the simplified acquisition threshold, an agency that has sent an offer letter for the contract to the SBA "may assume the offer is accepted and proceed with award" of the contract if the agency "does not receive a reply [from the SBA] within two days" of sending the offer letter. 13 C.F.R. § 124.503(a)(4)(i).

HUD submitted an offer letter for the Deque contract to the SBA on September 16, 2010. The offer letter specified that the proposed contract amount was \$75,048, which was below the simplified acquisition threshold in place at the time of the offer, which was \$100,000.⁴ See FAR § 2.101. Although HUD had not received a reply from the SBA to its September 16 offer letter when it awarded the contract to Deque on September 30, it was authorized to assume that the SBA had accepted the contract.⁵ 13 C.F.R. § 124.503(a)(4)(i); see also FAR § 19.804-3(c) ("For acquisitions not exceeding the simplified acquisition threshold, when the contracting activity makes an offer to the 8(a) Program on behalf of a specific 8(a) firm and does not receive a reply to its offer within 2 days, the contracting activity may assume the offer is accepted and proceed with award of an 8(a) contract."). Therefore, it is immaterial that the SBA did not affirmatively accept HUD's offer before HUD awarded the contract to Deque.

The protest is denied.

Lynn H. Gibson
General Counsel

³ This amount is \$6.5 million for acquisitions assigned manufacturing North American Industry Classification System codes. FAR § 19.805-1(a)(2).

⁴ The simplified acquisition threshold has since been increased to \$150,000 for most contracts. FAR § 2.101 (effective Oct. 1, 2010); 75 Fed. Reg. 53128, 53131 (daily ed. Aug. 30, 2010).

⁵ HUD received an e-mail from the SBA on November 17, 2010, formally accepting HUD's offer letter. AR, Tab 9, E-mail from SBA 8(a) Business Development Specialist to HUD Contract Specialist, Nov. 17, 2010, at 1.