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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Ashland Sales & Service Company

File: B-408969

Date: November 1, 2013

Ruth E. Ganister, Esq., Rosenthal and Ganister, LLC, for the protester.
Marc Lamer, Esq., Kostos & Lamer, P.C., for Creighton AB, Inc., an intervenor.
Shantay N. Clarke, Esq., and Allison Colsey Eck, Esq., Defense Logistics Agency, for the agency.
Louis A. Chiarella, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee was not enrolled in the employment eligibility verification (E-Verify) system at time of contract award involves a matter of contract administration not subject to GAO's review.

DECISION

Ashland Sales & Service Co., of Olive Hill, Kentucky, protests the award of a contract to Creighton AB, Inc., of Reidsville, North Carolina, under request for proposals (RFP) No. SPM1C1-13-R-0028, issued by the Defense Logistics Agency (DLA) for men's and women's Air Force lightweight jackets. Ashland argues that the award to Creighton is improper because Creighton was not registered in the E-Verify system¹ as required by the terms of the solicitation.

We dismiss the protest because it raises a matter of contract administration over which we do not exercise jurisdiction.

¹ E-Verify is an internet-based system operated by the Department of Homeland Security (U.S. Citizenship and Immigration Service) in partnership with the Social Security Administration that allows participating employers to electronically verify the employment eligibility of certain employees. As of September 8, 2009, federal contractors and subcontractors are required to use the E-Verify system to verify their employees' eligibility to work in the United States. Federal Acquisition Regulation (FAR) § 22.1803.

The RFP, issued as a small business set-aside, provided for the award of a fixed-price contract for men's and women's Air Force lightweight jackets in various sizes. Offerors were informed that award would be made on a lowest-price, technically-acceptable basis, and defined technical acceptability as the offeror's agreement to the delivery schedule and compliance with the terms and conditions of the solicitation. RFP at 10. Additionally, as relevant here, the RFP contained FAR clause 52.222-54, Employment Eligibility Verification, which states in pertinent part:

(b) Enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at [the] time of contract award, the Contractor shall--

(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award.²

See RFP at 69 (FAR 52.222-54(b)(1)(i)).

Four offerors, including Creighton and Ashland, submitted proposals by the closing date. Creighton's proposal of \$1,742,862 was the lowest-priced, and Ashland's proposal of \$1,790,250 was the next lowest-priced. Award was made to Creighton on September 19, 2013. Creighton was not enrolled in the E-Verify system at the time of award, but enrolled on September 20.

Ashland protested the award to the agency, complaining that Creighton was not registered in the E-Verify system as required by the RFP. Among other things, Ashland asserted that Creighton had been awarded other contracts by the same contracting activity containing the same employment eligibility verification clause, and had not enrolled in the E-Verify system as required.³ DLA denied Ashland's agency-level protest, and Ashland protested to our Office.

Our Office considers bid protest challenges to the award or proposed award of contracts. 31 U.S.C. § 3552 (2006). Therefore, we generally do not review matters of contract administration, which are within the discretion of the contracting agency

² The clause also contains additional timeframes (e.g., within 90 days of E-Verify enrollment) for beginning the verification of employment eligibility of new hires and of employees assigned to the contract. FAR clause 52.222-54(b)(ii).

³ The agency acknowledges that it awarded Creighton an earlier uniform apparel contract on April 16 which also contained FAR clause 52.222-54 (thereby requiring E-Verify program enrollment by May 16). DLA Letter to GAO, Oct. 18, 2013, at 3, 5. The agency states that it was unaware of the fact that Creighton had not previously enrolled in the E-Verify program until the issue was raised by Ashland's post-award protest here. DLA Email to GAO, Oct. 29, 2013, at 1.

and for review by a cognizant board of contract appeals or the Court of Federal Claims.⁴ 4 C.F.R. § 21.5(a) (2013); Colt Defense, LLC, B-406696.2, Nov. 16, 2012, 2012 CPD ¶ 319 at 5; Ceradyne, Inc., B-402281, Feb. 17, 2010, 2010 CPD ¶ 70 at 3 n.4; see also Kitco, Inc., B-221386, Apr. 3, 1986, 86-1 CPD ¶ 321 at 9.

Here the solicitation required contractors not enrolled in the E-Verify system at the time of contract award to enroll within 30 calendar days thereof (which Creighton did). We find this postaward requirement, which applies to contractors, to be a matter of contract administration having no effect upon the validity of an award. See Deere & Co., B-224275, Oct. 31, 1986, 86-2 CPD ¶ 504 at 4. The fact that a contractor's actual compliance with E-Verify requirements would thereby escape our review, as Ashland contends, does not constitute a valid reason to ignore the statutory limits of our bid protest jurisdiction.

Ashland does not dispute that Creighton enrolled in the E-Verify program within 30 days of the contract award here. Rather, the protester argues that DLA was prohibited from contracting with Creighton because of the awardee's previous noncompliance with applicable E-Verify requirements. As a result, Ashland argues, Creighton's proposal was technically unacceptable under the terms of the solicitation and ineligible for award. Protest at 2-5. While we do not condone Creighton's prior failure to enroll in the E-Verify system as required, we find this does not render its proposal here technically unacceptable, nor is contract award otherwise precluded by any procurement statute or regulation.⁵

The protest is dismissed.

Susan A. Poling
General Counsel

⁴ The few exceptions to this rule include situations where it is alleged that a contract modification improperly exceeds the scope of the contract and therefore should have been the subject of a new procurement; where a protest alleges that the exercise of a contractor's option is contrary to applicable regulations; or where an agency's basis for contract termination is that the contract was improperly awarded, see Sprint Commc'ns Co., L.P., B-271495, April 26, 1996, 96-1 CPD ¶ 211 at 4, none of which apply here.

⁵ Ashland also protests that award to Creighton violates the E-Verify requirements set forth in Executive Orders 12989 and 13465. Compliance with an executive order is a matter concerning executive branch policy, which we do not review under the circumstances here. Maritime Inst. Inc., B-407254, Nov. 20, 2012, 2012 CPD ¶ 325 at 3 n.1; 901 North Fifth Street, LLC, B-404997, B-404977.2, July 22, 2011, 2011 CPD ¶ 152 at 8.