



Decision

Matter of: Interoperability Clearinghouse

File: B-416001

Date: March 12, 2018

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Christina Austin, Esq., and Michael Anderson, Esq., Washington Headquarters Services, for the agency.
Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A protester is not an interested party to challenge a sole source 8(a) award to an Alaska Native Corporation where the protester neither is an 8(a) concern nor challenges the propriety of the inclusion of the challenged contract under the 8(a) program.

DECISION

Interoperability Clearinghouse (IC), of Alexandria, Virginia, protests the award of a contract to Eagle Harbor Solutions, LLC, a small business, of Anchorage, Alaska, under solicitation No. HQ0034-18-R-0032, issued by the Department of Defense, Washington Headquarters Services, for support services for the Cloud Executive Steering Group. The protester primarily asserts that the awardee has an impermissible organizational conflict of interest (OCI) that renders it ineligible for award.

We dismiss the protest because the protester, a not-for-profit entity, is not an interested party to challenge this sole-source award to an Alaska Native Corporation under the Small Business Administration's (SBA) 8(a) program.¹

¹ The SBA formally accepted the requirement into the 8(a) program on December 14, 2017. See Agency Supp. Br., exh. No. 1, SBA Acceptance Letter.

Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit of the relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. Id.

As an initial matter, IC represented that it is not an 8(a) concern. IC's Opp. to Request for Dismissal (Feb. 13, 2018) at 1 n.1. IC also explicitly asserts that it "has not challenged the agency's decision to place a procurement under the 8(a) program." IC's Opp. to Request for Dismissal (Feb. 13, 2018) at 5; see also IC's Supp. Br. (Feb. 22, 2018) at 2 ("Because the protest is not a challenge to 'the decision to place or not to place a procurement under the 8(a) program,' 4 C.F.R. § 21.5(b)(3) is inapplicable."). Thus, in the absence of any challenge to the propriety of the inclusion of the requirement in the 8(a) program, there is no basis for us to question whether the requirement was properly included in the 8(a) program.

Notwithstanding the protester's concessions that it is not eligible to participate in the 8(a) program and that it is not challenging the propriety of the inclusion of the requirement in the 8(a) program, IC contends that it is nevertheless an interested party to protest the award because if the awardee is found to be ineligible for award there is a likelihood that the requirement would be removed from the 8(a) program. We find, however, that this argument is too attenuated to establish the requisite interest to pursue this protest. See, e.g., Deval LLC, B-408519, Oct. 25, 2013, 2013 CPD ¶ 318 (finding a non-8(a) firm was not interested to challenge a competitive 8(a) follow-on acquisition where the SBA had not released the requirement from the 8(a) program); AVW Elec. Sys., Inc., B-252399, May 17, 1993, 93-1 CPD ¶ 386 (similarly dismissing challenge to an 8(a) award where the protester had graduated from the 8(a) program and the procuring agency represented that it had no intent to remove the requirement from the 8(a) program). Indeed, our Office has routinely found that where a contract has properly been accepted into the 8(a) program and the protester is not an 8(a) contractor, such a protester is not interested for purposes of challenging the qualifications of an 8(a) awardee. See, e.g., Azimuth, Inc., B-409711, B-409711.2, July 21, 2014, 2014 CPD ¶ 218 (dismissing protest allegations challenging an 8(a) awardee's capabilities); Ohana Indus., Ltd., B-404941, June 27, 2011, 2011 CPD ¶ 125 (same with respect to corporate experience); PECO Enters., Inc., B-232413, Dec. 6,

1988, 88-2 CPD ¶ 566 (same with respect to an alleged conflict of interest due to ownership by a former government official).

The protest is dismissed.

Thomas H. Armstrong
General Counsel