



## Decision

**Matter of:** SAK Management Consulting

**File:** B-418516

**Date:** March 18, 2020

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Semy Kakoma, SAK Management Consulting, for the protester.  
Tami S. Hagberg, Esq., Nana Yaa Agyemang, Esq., Giovanna Jean-Baptiste, Esq.,  
Department of Health and Human Services, for the agency.  
Heather Self, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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### DIGEST

Protest is dismissed as untimely because the protester did not submit a readable protest file in GAO's Electronic Protest Docketing System until more than 10 days after it knew the basis of its protest, notwithstanding protester's submission of an un-openable file prior to close of business on the tenth day.

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### DECISION

SAK Management Consulting, LLC, a small disadvantaged business of Fredericksburg, Virginia, protests the award of a contract on a sole-source basis to Empirical Concepts, Inc.,<sup>1</sup> by the Department of Health and Human Services (HHS) for audit support work. The protester argues that the agency lacked an adequate justification for making award

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<sup>1</sup> In its protest, SAK challenges an award made to GMG Management Consulting, Inc. Protest at 1. The record reflects that the agency made award to Empirical Concepts, Inc., not GMG. Request for Dismissal, exh. 1, Contracting Officer's Statement (COS), at 1. The protester contends that Empirical is an 8(a) firm that GMG used as the prime 8(a) contractor in order to obtain the 8(a) award, and that GMG is "going to do the work anyway." Response to Request for Dismissal at 1. For the reasons discussed below, we dismiss the protest as untimely. Accordingly, we need not resolve the protester's allegations regarding the identity of the awardee.

on a sole-source basis, and that the agency removed the requirement from the 8(a) program in violation of applicable Small Business Administration (SBA) regulations.<sup>2</sup>

We dismiss the protest as untimely.

Through the SBA's 8(a) program, the agency awarded a contract for audit support work to SAK-GMG Joint Venture, LLC on January 1, 2019, for a 1-year base period and four 1-year option periods. COS at 1. The record reflects that on September 24, 2019, the SBA informed the agency that the joint venture had been disapproved. Id.; COS, attach. 1, Letter from SBA to HHS, at 1. In light of the disapproval, the agency decided to reprocure the requirement, rather than exercise the first option year on SAK-GMG's contract. COS at 1.

The agency represents that the requirement has been in the 8(a) program for approximately ten years, and that there was "no known rationale to remove it from the program." COS at 1. Accordingly, on December 4, 2019, the agency submitted an offer letter to SBA indicating the agency's intent to negotiate on a sole-source basis with Empirical Concepts, Inc., a contractor in the 8(a) program. Id.; COS, attach. 2, Agency Offering Letter. The agency provides that the total estimated value for the requirement is \$3,227,223. COS at 2; COS, attach. 2, Agency Offering Letter, at 1. The SBA regulations governing the 8(a) program and applicable sections of the FAR permit agencies to negotiate sole-source 8(a) awards when the anticipated total value of the contract, including options, will not exceed \$4,000,000. 13 C.F.R. § 124.506(a)(2)(ii); FAR § 19.805-1(a)(2). On December 9, 2019, the SBA accepted the agency's offer letter to negotiate with Empirical on a sole-source basis. COS at 1; COS, attach. 3, SBA Acceptance Letter.

On February 12, 2020, the agency notified SAK that an award had been made for the audit support work. Request for Dismissal at 1; Protest, exh. B, Email from HHS to Protester. At 9:19 p.m.<sup>3</sup> on February 20, SAK attempted to file its protest with our Office challenging the sole-source award. See Electronic Protest Docketing System (Dkt.) No. 1. Our Bid Protest Regulations provide that a submission that is received after 5:30 p.m. is considered to be filed on the following business day. 4 C.F.R. § 21.0(g); AeroSage, LLC--Costs, B-417289.8, Aug. 2, 2019, 2019 CPD ¶ 271 at 3 n.5. Accordingly, SAK's February 20 filing is considered to have been filed on February 21.

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<sup>2</sup> Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the SBA to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) § 19.800. This program is commonly referred to as the 8(a) program.

<sup>3</sup> All times stated herein are Eastern Time.

The attempted February 21 protest filing consisted of three documents--a protest letter and two exhibits. Dkt. No. 1. Our Office was able to open both of the exhibit documents, but we could not open the protest letter.<sup>4</sup> Request for Dismissal, exh. 3, Email from GAO to Protester. At 6:57 a.m. on February 21, our Office contacted SAK regarding the problem with its filing, and asked it to resubmit its protest “as soon as possible.” Id. Our Office advised SAK that in order for its corrected filing to be considered filed on February 21--the same day as its original filing attempt--our Office “must receive the corrected filing before 5:30 p.m.” Id. Three days later, at 12:27 p.m. on February 24, our Office again notified SAK that we had not yet received a corrected filing, and requested that it “upload a corrected filing as soon as possible.” Request for Dismissal, exh. 4, Email from GAO to Protester.

At 8:11 p.m. on February 24, SAK attempted to resubmit its protest letter. Dkt. No. 4. As discussed above, because this filing was made after 5:30 p.m. it is considered to have been filed on February 25. Again, our Office was unable to open the February 25 protest letter. At 5:42 p.m. on February 25, SAK sent its protest letter to our Office via email. Email from Protester to GAO. Again, because this email was received after 5:30 p.m. it is considered to have been received on February 26. Our Office was able to open the February 26 protest letter, and uploaded it to the protest docket for the protester. Dkt. No. 5.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

Here, SAK acknowledges that it learned the basis of its protest on February 12. Protest at 2. Because the last day of the period within which SAK could file a timely protest fell on a Saturday, the period extended to the next day that our Office was open, which was February 24. See 4 C.F.R. §§ 21.0(d); 21.2(a)(2). Prior to 5:30 p.m. on February 24, SAK made a single unsuccessful attempt to submit its protest. See Dkt. No. 1 (initial un-openable February 21 protest letter). SAK contends that our Office should consider its filing to be timely because of “technical circumstance beyond [its] control.” Response to Request for Dismissal at 1. As set forth above, however, despite our Office twice

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<sup>4</sup> Our Office received the following error message when we attempted to open the protest letter: “Adobe Acrobat could not open ‘Protest\_Letter\_to\_GAO\_II.pdf’ because it is either not a supported file type or because the file has been damaged (for example, it was sent as an email attachment and wasn’t correctly decoded).” The agency also was unable to open the protest letter, and separately contacted SAK regarding the problem at 6:50 a.m. Eastern on February 21. Request for Dismissal, exh. 2, Email from Agency to Protester.

notifying SAK that we were unable to open its protest letter, it did not attempt to resolve the “technical circumstance beyond [its] control” and resubmit its protest until after the filing deadline had passed on February 24. A readable protest was not filed until February 26. Both SAK’s initial attempt to resubmit its protest and its eventual submission of a readable protest letter were more than 10 days after SAK knew the basis of its protest. Accordingly, the protest is untimely. See CWIS, LLC, B-416544, July 12, 2018, 2018 CPD ¶ 236 at 3-4 (dismissing protest as untimely where the protester attempted to file prior to 5:30 p.m. on the last day of its timely filing window but was unable to successfully file until after that time due to technical difficulties, resulting in its protest being filed the next business day).

The protest is dismissed.

Thomas H. Armstrong  
General Counsel