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# Decision

**Matter of:** AGMA Security Service, Inc.

**File:** B-418647

**Date:** June 24, 2020

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Alan Grayson, Esq., Law Office of Alan Grayson; and Alberto Fuentres Masarovic, Esq., Law Office of Alberto Fuentres Masarovic, for the protester.  
Howard W. Miller, Esq., and Denise A. McLane, Esq., Department of Homeland Security, for the agency.  
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that agency improperly extended and increased the maximum value of the incumbent contract for protective security officer services is dismissed as untimely where the protest was filed more than 10 days after the agency posted a notice stating its intention to continue to obtain services from the incumbent contractor on the basis that the incumbent was the only source able to meet the agency's requirements.

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## DECISION

AGMA Security Service, Inc., of Hormigueros, Puerto Rico, a small business, protests the extension of a contract awarded to The COGAR Group, Ltd., of Falls Church, Virginia, by the Department of Homeland Security (DHS), Federal Protective Service, for armed protective security officer (PSO) services at Customs and Border Protection facilities in Puerto Rico. AGMA argues that DHS lacks a valid justification to extend COGAR's contract on a sole-source basis.

We dismiss the protest.

## BACKGROUND

AGMA challenges a modification, issued on March 25, 2020 and valued at \$4.7 million, to COGAR's existing contract for PSO services. The modification extends from

April 1, 2020, to March 21, 2021, the 5-year contract<sup>1</sup> that initially was awarded to COGAR on April 2, 2014, under request for proposals (RFP) No. HSHQE2-13-R-00007. AR, Tab 2, Memorandum of Law (MOL), at 1.

This modification followed the issuance of an RFP by DHS on May 2, 2019, seeking proposals from participants in the Small Business Administration's (SBA) section 8(a) program<sup>2</sup> to provide PSO services. After reviewing proposals from multiple offerors, including AGMA, DHS announced that it had selected Diversified Protection Corporation for award. A competitor then submitted a protest challenging Diversified's eligibility for award as a small business, after which the SBA ruled that Diversified was not eligible for award.

In response to the SBA ruling, DHS canceled the award to Diversified, and stated that it would reevaluate the remaining proposals and select a new awardee. However, on January 16, 2020, DHS notified the offerors that the RFP had been canceled, and a new RFP would be "released in the future." AR, Tab 17, RFP amend. 6, at 1.

On February 20, the contracting officer prepared a sole-source justification and approval (J&A) document to extend COGAR's contract for one year, citing 41 U.S.C. § 3304(a)(1) and FAR 6.302-1 as the authority for the agency's action. AR, Tab 20, Justification and Approval for Other than Full and Open Competition, at 3, 7. The cognizant DHS competition advocate approved the J&A on March 23. *Id.* at 7.

On the evening of March 25, DHS posted a notice on the website at beta.SAM.gov, stating that DHS "intends to issue a sole source extension of up to twelve months to the current ordering period of an existing indefinite delivery/indefinite quantity type contract" with COGAR. AR, Tab 21, beta.SAM.gov posting, at 2. The March 25 notice also included the following statement:

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<sup>1</sup> The initial contract provided for a one-year base period, 4 one-year options, and a further six-month option to extend the contract under the standard Extension of Services clause (Federal Acquisition Regulation (FAR) 52.217-8). DHS explains that the performance period of the contract originally ran from July 1, 2014 through December 31, 2020 (including four annual options and a six-month extension of services option), but that modification No. 5 to the contract changed the performance period to begin on October 1, 2014, and continue through March 31, 2020 (assuming all potential options were exercised, as they ultimately were). Req. for Dismissal at 1; Agency Report (AR), Tab 1, Contracting Officer's Statement, at 4.

<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 the performance of such contracts by awarding subcontracts to socially and economically disadvantaged small business concerns. FAR 19.800. This program is commonly referred to as the 8(a) program.

The Government intends to solicit and negotiate on a sole source basis with The COGAR Group, Ltd. under the authority of 41 U.S.C. 3304(a)(1) as implemented by FAR 6.302-1, only one responsible source and no other supplies or services will satisfy agency requirements. This notice of intent is not a request for competitive proposals. A Request for Proposal (RFP) will not be made available.

*Id.*

On April 2, DHS issued a modification to COGAR's contract that extended the term of the contract to March 31, 2021, increased the maximum value of the contract by \$4.7 million, and increased the contract's hourly labor rate. AR Tab 22, Modification 31, at 1-2. The following day, DHS posted a redacted copy of the J&A on beta.SAM.gov. AGMA filed this protest on April 7.

## DISCUSSION

DHS requests dismissal of the protest as untimely, arguing that AGMA knew or should have known the bases for its challenges to the agency's action no later than March 26 (in recognition of the fact that the notice was posted on beta.SAM.gov after business hours on the evening of March 25). DHS notes that the protest was filed 12 days later, on April 7, and argues that the protest is untimely. Req. for Dismissal at 5.

AGMA contends that its protest is timely because until DHS released the J&A, AGMA lacked sufficient information about DHS's actions to file a protest. AGMA also contends that the March 25 notice that the agency intended to extend COGAR's contract "surely carries little weight" because it contradicted DHS's earlier statements that the agency would conduct a competitive procurement. Opposition to Req. for Dismissal at 10. Finally, AGMA argues that the notice was invalid because it was posted on beta.SAM.gov, rather than the official government point of entry specified in the FAR, which is fbo.gov. *Id.* at 7; see FAR 2.101 (definition of government point of entry).

We disagree with AGMA that it lacked the information necessary to file this protest until DHS posted the redacted J&A. All of AGMA's arguments challenge the decision to initiate a sole-source contracting action with COGAR on the basis that it was the only firm able to provide PSO services for the coming year. The intention to take that action and the legal rationale--that there was only one responsible source--were both apparent from the March 25 notice. AGMA thus knew or should have known that DHS believed that COGAR was the only responsible source, while AGMA believed that it could also meet DHS's requirements had a basis to challenge the agency's rationale. Similarly, AGMA knew that DHS intended to extend COGAR's contract, while AGMA believed that any such extension would violate law or regulation. Accordingly, to be timely, AGMA had to file any protest challenging DHS's sole-source contracting action within 10 days.

Furthermore, although AGMA is correct that the government point of entry is defined in the FAR as being "located at [www.fbo.gov](http://www.fbo.gov)," *id.*, that Internet address redirects browser software to the address [fbohome.sam.gov](http://fbohome.sam.gov) which displays a message identifying the

successor website: beta.SAM.gov.<sup>3</sup> The change to the website address does not invalidate the notice to any interested sources, including AGMA, of DHS's intention to proceed on a sole-source basis.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. 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). Our timeliness 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. *Dominion Aviation, Inc.--Recon.*, B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

Although AGMA argues that its protest raises a significant issue; that is, an issue of significant interest to the procurement community, we disagree. Previous decisions from this Office address similar challenges to the decision to extend an incumbent contract on a sole-source basis. *E.g., Diversified Tech. & Servs. of Va., Inc.*, B-282497, July 19, 1999, 99-2 CPD ¶ 16 at 3 (protest denied where agency justified sole-source extension of contract with incumbent as the only feasible source until a new contract could be awarded under a revised solicitation).

The protest is dismissed.

Thomas H. Armstrong  
General Counsel

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<sup>3</sup> Specifically, the webpage message states that "FBO.gov has been moved to beta.SAM.gov and is now known as Contract Opportunities." And that "beta.SAM.gov is now the authoritative location for finding contract opportunities." General Servs. Admin., *FBO.gov has moved*, <https://fbohome.sam.gov/> (last visited June 16, 2020).