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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Louisiana State Department of Social Services, Louisiana
Rehabilitation Services

File: B-400912.2

Date: July 1, 2009

Kevin Monk for the protester.

Vincent A. Salgado, Esq., National Aeronautics and Space Administration, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Government Accountability Office will not consider protest by state licensing agency (SLA) challenging award of contract for manufacturing support and facilities operation at National Aeronautics and Space Administration (NASA) facility, on basis that NASA was required under Randolph-Sheppard Act (RSA) to issue SLA a permit for service of vending machines and/or allow SLA to submit offer in competition to provide cafeteria service at NASA facility; RSA establishes mandatory binding arbitration process at Department of Education to resolve such complaints.

DECISION

The Louisiana State Department of Social Services, Louisiana Rehabilitation Services (LRS), protests the National Aeronautics and Space Administration's (NASA) award of a contract to Jacobs Engineering Group, Inc., under request for proposals (RFP) No. NNM0838773R, for manufacturing support and facilities operation at NASA's Michoud Assembly Facility, New Orleans, Louisiana. LRS asserts that NASA failed to comply with the requirements of the Randolph-Sheppard Act (RSA). 20 U.S.C. § 107 (2000). LRS asserts that NASA was required under the RSA to issue LRS a permit for service of the vending machines and/or allow LRS to submit an offer in competition to provide the cafeteria service at the Michoud Assembly Facility.

We dismiss the protest.

The RSA establishes a priority for blind persons recognized and represented by state licensing agencies (SLA), such as LRS, in the operation of vending facilities,

including cafeterias, in federal buildings. 20 U.S.C. § 107; 34 C.F.R. § 395.33(a) (2008). The RSA has the stated purpose of “providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self supporting.” 20 U.S.C. § 107(a). The RSA directs the Secretary of Education to designate state agencies responsible for training and licensing blind persons, 20 U.S.C. § 107a(a)(2), and provides that “[i]n authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons licensed by a State agency.” 20 U.S.C. § 107(b). For purposes of the case here, the RSA includes cafeterias within the definition of a “vending facility.” 20 U.S.C. § 107e(7). With respect to the operation of cafeterias at federal facilities, the act directs the Secretary of Education to issue regulations to establish a priority for blind licensees whenever “such operation can be provided at a reasonable cost with food of a high quality comparable to that currently provided to employees, whether by contract or otherwise.” 20 U.S.C. § 107d-3(e).

Pursuant to this authority, the Secretary of Education has promulgated regulations addressing the RSA’s requirements. Among the matters covered by these regulations are rules governing the relationship between the SLAs and blind vendors, rules for becoming a designated SLA within the meaning of the act, procedures for the oversight of SLAs by the Secretary, and rules governing the relationship between SLAs and other federal agencies. 34 C.F.R. part 395. With respect to disputes between SLAs and federal agencies, both the statute and the regulations provide for the filing of complaints with the Secretary, which are then to be resolved by binding arbitration. 20 U.S.C. § 107d-1(b); 34 C.F.R. § 395.37. Specifically, the regulation, which closely tracks the language of the statute, provides as follows:

Whenever any [SLA] determines that any department, agency, or instrumentality of the United States which has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of the Act or of this part and all informal attempts to resolve the issues have been unsuccessful, such licensing agency may file a complaint with the Secretary.

34 C.F.R. § 395.37(a). An arbitration panel would then be established to resolve such SLA complaints, and its decision will be “final and binding,” subject to appeal and review. 34 C.F.R. § 395.37(b).

We have interpreted the RSA and its implementing regulations as vesting authority with the Secretary of Education regarding SLA complaints concerning a federal agency’s compliance with the RSA. Washington State Dept. of Servs. for the Blind, B-293698.2, Apr. 27, 2004, 2004 CPD ¶ 84 at 3-5; Mississippi State Dept. of Rehabilitation Servs., B-250783.8, Sept. 7, 1994, 94-2 CPD ¶ 99 at 3. In our view, this means that such complaints are subject to the RSA’s binding arbitration provisions and are not for consideration by our Office under its bid protest jurisdiction.

Maryland State Dept. of Education, B-400583, B-400583.2, Nov. 7, 2008, 2008 CPD ¶ 209 at 5. Our view in this regard reflects our more general view that where, as here, Congress has vested oversight and final decision-making authority in a particular federal official or entity, we will not consider protests involving issues subject to review by that official or entity. Washington State Dept. of Servs. for the Blind, *supra*; see, e.g., High Point Sec., Inc.--Recon. and Protest, B-255747.2, B-255747.3, Feb. 22, 1994, 94-1 CPD ¶ 169 at 2 (determinations by the Small Business Administration under the certificate of competency program pursuant to 15 U.S.C. § 637(b)(7)) (2000); ARA Env'tl. Servs., Inc., B-254321, Aug. 23, 1993, 93-2 CPD ¶ 113 at 2 (protest of award under the Javits-Wagner-O'Day Act, 41 U.S.C. §§ 46-48c (2000)).

LRS asserts that its Randolph-Sheppard Vending Program has priority under the RSA for the provision of vending facilities and food services on all federal property (in Louisiana), and that NASA was required under the RSA to issue LRS a permit for service of the vending machines and/or allow LRS to submit an offer in competition to provide the cafeteria service at the Michoud Assembly Facility. Protest at 1. This assertion clearly concerns NASA's alleged failure to comply with the provisions of the RSA, and the RSA provides for binding arbitration. See 34 C.F.R. § 395.37(a). Accordingly, the matter is not for consideration by our Office under our bid protest function.

The protest is dismissed.

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Acting General Counsel