



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

Decision

Matter of: TranLogistics, LLC

File: B-407215

Date: November 30, 2012

Lily Tran for the protester.

Maj. Frank Yoon, Department of the Air Force, for the agency.

Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that an agency improperly awarded a contract to a firm whose sole owner was a federal government employee is denied where the record shows that the firm's owner was not a federal employee at the time of award or thereafter.

DECISION

TranLogistics, LLC protests the award of a contract to The Rockhill Group, Inc. under request for proposals No. FA7037-12-R004, issued by the Department of the Air Force for the use, maintenance and support of aircraft required for pilot and intelligence personnel training. TranLogistics contends that Rockhill is owned by a federal government employee.

We deny the protest.

BACKGROUND

The RFP, issued as a competitive set-aside for participants in the Small Business Administration's (SBA) section 8(a) program, provided for the award of a contract on a lowest-priced, technically acceptable basis.¹ Previously, Rockhill had received a

¹ Section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with government agencies and to provide for performance through subcontracts designed to assist developing small business concerns which are owned and controlled by designated disadvantaged individuals. See 13 C.F.R. Part 124. Department of Defense agencies have been delegated authority to enter into

(continued...)

1-year contract as a non-competitive section 8(a) award. When that contract ended, on December 31, 2011, it was followed by an interim contract (January - February 2012), which was later extended through June 2012. This was followed by a bridge contract with a performance period of July - September 2012.

The agency received four proposals in response to the RFP. Only the proposals of Rockhill (with an evaluated price of \$30.8 million) and TranLogistics (with an evaluated price of \$32.1 million) were found to be technically acceptable. Source Selection Decision Document at 2. *Id.* at 4. Rockhill's proposal was selected for award as the lowest-priced, technically acceptable offeror. The current contract with a base year and 4 option years was awarded to Rockhill on August 21, 2012.

This protest followed.

DISCUSSION

TranLogistics complains that Rockhill's owner is a federal government employee, and is therefore ineligible to receive a government contract.² The Federal Acquisition Regulation (FAR) prohibits an agency from knowingly awarding a contract to a federal employee or a firm owned or controlled by a federal employee (except in circumstances not applicable here). FAR § 3.601(a).

The agency responds that Rockhill's sole owner, who acquired the business in September, 2007, served on active duty in the Air Force until 2004 when he retired. The Air Force also states that he was a civilian employee of the Air Force from January 2011 to February 2012, and that the contracting officer was unaware of this civilian employment until the protest was filed. Contracting Officer's Statement, at 9; Agency Report, Tab 19, Rockhill Emails of September 19 and 20, 2012.

Because the record shows that Rockhill was not owned or controlled by a government employee when the contract at issue was awarded, the award did not violate FAR § 3.601(a). Accordingly, we deny this basis of protest.³

(...continued)

section 8(a) contracts on behalf of SBA. Defense Federal Acquisition Regulation Supplement Subpart 219.8.

² TranLogistics' protest also challenged the earlier non-competitive contract awards. We dismissed these protest bases as untimely.

³ Although we deny TransLogistics' protest, given that some of the earlier noncompetitive section 8(a) awards were made to Rockhill when it was apparently owned and controlled by a federal employee, we are referring this matter by written submission to the appropriate Inspector General offices at the Air Force and SBA for their review.

In its comments on the agency report, TranLogistics raises a number of other complaints that appear to challenge Rockhill's status as a small business and as a section 8(a) concern. We generally do not have jurisdiction to review such status questions. The Small Business Act gives to the SBA, not our Office, the conclusive authority to determine matters of small business status for federal procurements. Bid Protest Regulations, 4 C.F.R. § 21.5(b)(1) (2012); Randolph Eng'g Sunglasses, B-280270, Aug. 10, 1998, 98-2 CPD ¶ 39 at 3.

The protest is denied.

Lynn H. Gibson
General Counsel