



Decision

Matter of: CWIS, LLC

File: B-416544

Date: July 12, 2018

Rene Ugarte, Esq., Whitcomb, Selinsky, McAuliffe PC, for the protester.
Julie Cannatti, Esq., and Audrey Roh, Esq., Department of Housing and Urban Development, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency lacked a valid basis for sole-source contract award is dismissed as untimely where protest was submitted to GAO after closing time on Friday, and thus was not filed until Monday morning when GAO reopened for filings, which was more than 10 days after protester knew or should have known its basis of protest, notwithstanding counsel's apparent unsuccessful attempt to file protest 1 minute before closing time on Friday.

DECISION

CWIS, LLC, of Colorado Springs, Colorado, protests sole-source justification No. JOFOC1817, issued by the Department of Housing and Urban Development (HUD), to enter into a 12-month contract with P.K. Management Group, Inc. (PKMG), of Doral, Florida, for field service management (FSM) services at HUD-managed properties in Nevada, Idaho, Oregon, Washington, and Alaska (known as areas 4S and 6S). CWIS argues that HUD lacked a valid legal and factual basis to award a contract to PKMG on a sole-source basis due to unusual and compelling urgency, rather than holding at least a limited competition; that even if there were a valid basis, the 12 month term exceeds the time necessary to conduct a competition for the requirement; and that the unusual and compelling urgency cited by HUD is negated by a lack of reasonable planning.

We dismiss the protest as untimely.

As background, starting on May 1, 2018, GAO fully implemented the electronic protest docketing system (EPDS). Under regulations effective that day, all new protests were required to be filed using the EPDS system (at <https://epds.gao.gov/login>), which

requires payment of a filing fee, as provided in authorizing legislation. See generally 83 Fed. Reg. 13817 (Apr. 2, 2018).

The regulations implementing EPDS provide that “[p]rotests must be filed through the EPDS.” Id. at 13823 (amending 4 C.F.R. § 21.1(b)). The regulations also specify that “[a] document is filed on a particular day when it is received in EPDS by 5:30 p.m., Eastern Time.” Id. (amending 4 C.F.R. §§ 21.0(f) and (g)). With respect to alleged errors in the solicitation process where there was no due date for submission of responses to a solicitation, the regulations specify as follows:

If no closing time has been established, or if no further submissions are anticipated, any alleged solicitation improprieties must be protested within 10 days of when the alleged impropriety was known or should have been known.

Id. (amending 4 C.F.R. § 21.2(a)(1)).

The EPDS website provides instructions regarding the steps necessary to file a protest. Those instructions include the following guidance:

(a) . . . In the event that a Filer is unable to file a document in EPDS due to a technical failure of EPDS during normal system operating hours, the following procedures in paragraph (b) shall apply. . . .

(b) . . . If EPDS is unavailable during normal system operating hours, a Filer should:

- i. Contact GAO to ascertain EPDS’s operating status.
- ii. Make its submission to protests@gao.gov, with courtesy copies to the other parties (subject to any requirements under an applicable protective order). Failure to submit filings through EPDS, or protests@gao.gov in the event EPDS is unavailable during normal system operating hours, within the time periods set forth in GAO’s Bid Protest Regulations may result in dismissal of the protest, request for reconsideration, or request relating to costs.

EPDS Instruction No. VII.22. Additionally, EPDS Instruction No. III.6(b) states as follows:

Due to the time required to create a user account, submit all required information, and pay the Filing Fee, Filers are advised to file new protests in advance of any applicable deadlines. The Time of Filing shall be final, and no extensions shall be granted due to delays in completing any filing, other than as a result of a technical failure of EPDS as set forth in section VII.22.

On June 19, HUD posted justification and approval document on fbo.gov, which identified 41 U.S.C. § 3304(a)(2) and Federal Acquisition Regulation § 6.302-2 as the legal basis for a class justification and approval to enter into a contract with PKMG on a sole-source basis for \$18 million for 12 months of services. The justification document cited unusual and compelling urgency that had arisen from the agency's decision not to exercise an option to extend the incumbent contract, which therefore ended on May 31. The justification identified HUD's need to provide continuous FSM services, so that approximately 500 HUD-owned properties in the affected states could be marketed, preserved and protected, and so that the risk of adverse occupants, vandals, and thieves could be managed.

On Friday, June 29, at 5:29 p.m., Eastern Time,¹ (or approximately 1 minute before the closing time for submission of protests that day), counsel for CWIS attempted to file this protest using EPDS. The attempt was unsuccessful, and resulted in counsel receiving an error message.

At 5:31 p.m., Eastern Time, after our Office had closed for filings, counsel for CWIS contacted our Office by email, to advise that the attempt to file to protest using EPDS had been unsuccessful. At 5:46 p.m., Eastern Time, counsel submitted the protest by email to the GAO protest inbox.²

Upon reviewing the protest, our Office noted that the protest stated that the sole-source notice had been posted publicly on June 18. Our Office asked counsel for CWIS to explain how the protest was timely, particularly because the protest was dated June 29. Counsel for CWIS responded that the June 18 date listed in the protest was a typographical error, and that HUD actually posted the sole-source notice on June 19. Nevertheless, under our Office's Bid Protest Regulations, as amended, CWIS submitted its protest to GAO on June 29 at 5:46 p.m., Eastern Time, which did not constitute a "filing" until the morning of July 2. See 83 Fed. Reg. at 13823 (amending 4 C.F.R. § 21.0(g) to provide that a document is "filed" when it is received in EPDS by 5:30 p.m., Eastern Time). The July 2 protest filing was thus more than 10 days after HUD posted the notice of the basis for awarding the sole-source contract to PKMG.

Our Bid Protest Regulations 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,

¹ Counsel states that this effort occurred at "6.29.2018 3:30 EST," but the EPDS system logs show no activity by counsel's account until 5:29 p.m., Eastern Daylight Time. The confusion may have resulted from counsel's location in the Mountain time zone.

² As noted above, the EPDS instructions provide for submission of a protest to the official email inbox when EPDS is unavailable during normal business hours. After the email submission, counsel later submitted the protest successfully using EPDS and paid the filing fee.

B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Here, CWIS knew or should have known of its basis of protest on June 19, when HUD posted its justification documents for the sole-source contract award to PKMG. However, the protest was not filed until July 2, making it untimely.

The protest is dismissed.

Thomas H. Armstrong
General Counsel