

**United States Government Accountability Office
Washington, DC20548**

Decision

Matter of: Bill Henson--Designated Employee Agent

File: B-400060

Date: June 2, 2008

Bill Henson, Designated Employee Agent, the protester.
Charles K. Bucknor, Jr., Esq., and Dennis A. Adelson, Esq., Department of Labor, for the agency.
Peter D. Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest filed by Designated Employee Agent alleging that Department of Labor's (DOL) planned reorganization of certain services constitutes an improper implementation of the "most efficient organization" following public-private competition is dismissed; protester has standing only to challenge agency actions related to conduct of a public-private competition, or agency decision to convert a function to private sector performance without such a competition, and not to challenge agency actions regarding implementation of results of a public-private competition.

DECISION

Bill Henson--Designated Employee Agent protests the Department of Labor's (DOL) alleged plans to reorganize the finance and accounting services in DOL's Office of the Assistant Secretary for Administration and Management. Mr. Henson asserts that the reorganization is an improper attempt to implement the government's "most efficient organization" (MEO), the successful competitor under the Office of Management and Budget (OMB) A-76 competition conducted under reference number DOL-Multi-Agency-Finance-Accounting-Svcs1 for these services.

We dismiss the protest on the basis that the protester is not an interested party eligible to challenge the agency's actions.

On May 24, 2007, DOL announced the results of the OMB A-76 public-private competition for DOL's Finance and Accounting Services functional area, involving approximately 108 full-time equivalent positions assigned to the Mine Safety and

Health Administration, Office of the Chief Financial Officer, Bureau of Labor Statistics, Office of the Assistant Secretary for Administration and Management, and Occupational Safety and Health Administration, in Washington, D.C. and nine states. As a result of the A-76 competition, DOL determined that the work associated with the functional area will remain within DOL, performed by the MEO.

Approximately 7 months later, on December 26, 2007, Public Law 110-161 took effect. That statute contains a provision suspending DOL's A-76 competitions until certain requirements are met. Specifically, section 111 states

[n]one of the funds available in this Act may be used to carry out a public-private competition or direct conversion under Office of Management and Budget Circular A-76...until 60 days after the Government Accountability Office provides a report to the Committees on Appropriations of the House...and the Senate on the use of competitive sourcing at the Department of Labor.

Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 6, div. G, title 1, § 111, 121 Stat. 1844, 2168 (effective Dec. 26, 2007). Two days later, DOL issued a memorandum that temporarily suspended all A-76 competitive sourcing activities at the agency. Motion to Dismiss at 4.

On March 31, 2008, according to Mr. Henson, he learned that the agency intends to reorganize the finance and accounting services at DOL. In this regard, Mr. Henson's protest includes an email in which a DOL employee states that "since this is a reorganization instead of an implementation of an MEO, our MEO Implementation Plan needs to be over-hauled and any reference to MEO/Competitive sourcing needs to be removed." Protest, exh. 4, at 1-2. Mr. Henson, as the designated employee agent of the federal employees performing the function in question,¹ then filed this protest with our Office, asserting that the reorganization is an attempt to implement the MEO, and thus is prohibited under section 111.²

¹ "Designated agents" must be designated as such by a majority of the agency's affected employees. 31 U.S.C. § 3551(2)(B)(ii). In this protest, DOL challenges the protester's designated agent status, asserting that the protest only contains evidence that 13 individuals have declared Mr. Henson to be their agent, while approximately 108 agency employees are affected by the A-76 competition. Since we dismiss the protest on other grounds, we need not address this issue.

² Mr. Henson's protest was also based on a challenge to a specific DOL employee's reduction in force (RIF) letter. Mr. Henson asserted that the RIF was part of the agency's improper implementation of the finance and accounting MEO. The agency responded that the individual who received the letter was not, in fact, part of the MEO at issue here, and that his job was not affected by this A-76 competition. The
(continued...)

Recently enacted changes to our bid protest statute have granted interested party status to any one individual who has been designated as the agent of the federal employees for the purposes of representing them in a public-private competition, or for purposes of arguing that a public-private competition is required.³ In this regard, the statute states

[t]he term “interested party”—...(B) with respect to a public-private competition conducted under Office of Management and Budget Circular A-76 with respect to the performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76, includes—...(ii) any one individual who, for the purpose of representing the Federal employees engaged in the performance of the activity or function for which the public-private competition is conducted in a protest under this subchapter that relates to such public-private competition, has been designated as the agent of the Federal employees by a majority of such employees.

31 U.S.C. § 3551(2).

Here, however, an A-76 competition was already conducted and Mr. Henson is not challenging the results of that competition. Rather, he asserts that the agency is improperly implementing the results of that competition. Since the statute does not extend interested party status to a designated employee agent for purposes of challenging the implementation of an MEO following an A-76 competition, Mr. Henson lacks standing to pursue this protest.

The protest is dismissed.

Gary L. Kepplinger
General Counsel

(...continued)

protester now concedes that the individual was not part of the MEO or the A-76 study at issue here.

³ Under this latter category, our Office has found that designated employee agents have standing to challenge an agency’s decision to convert services to contractor performance without a competition. Gloria Kortum--Designated Employee Agent, B-311266, Apr. 15, 2008, 2008 CPD ¶ __.