

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Alalamiah Technology Group Co. (K.S.C.C.)) ASBCA No. 58582
)
Under Contract No. 000000-00-0-0000)

APPEARANCE FOR THE APPELLANT: Ms. Violy C. Pajarillo
Manager

APPEARANCES FOR THE GOVERNMENT: Daniel K. Poling, Esq.
DLA Chief Trial Attorney
ChristinaLynn E. McCoy, Esq.
Bruce T. McCarty, Esq.
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE TUNKS
ON THE GOVERNMENT’S MOTION TO DISMISS FOR LACK OF JURISDICTION

On 5 March 2013, appellant Alalamiah Technology Group Co. (K.S.C.C.) (hereinafter, ATG) filed an appeal “concerning DLA & Solicitation number SP7000-12-Q-0033.” The government moves to dismiss for lack of jurisdiction.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

1. On 6 December 2011, DLA Document Services (DLA), a field activity of the Defense Logistics Agency, issued Request for Quotations No. SP7000-12-Q-0033 for the lease of 284 printer/copier devices for use in Kuwait (ex. G-1 at 85-155 of 169). ATG was one of seven offerors (*id.* at 86). Prior to award, DLA reduced its requirement from 284 devices to 269 devices and extended the closing date from 29 February to 11 May 2012 (*id.*). ATG was not informed of the changes (Bd. corr. file, app. email dtd. 3 June 2013). On 12 July 2012, DLA awarded Contract No. SP7000-12-F-0114 in the amount of \$5,769,144 to Trident Engineering & Procurement, P.C. (Trident) (ex. G-1 at 86 of 169).

2. ATG filed four protests with the U.S. Government Accountability Office (GAO) prior to this appeal. On 28 July 2012, ATG protested price evaluation and source selection used for the award. DLA acknowledged that there were irregularities and agreed to re-evaluate the quotations and, if warranted, make a new award. Based on DLA’s proposed corrective action, GAO dismissed the protest as “academic” on 9 August 2012. (B-407094) On 4 October 2012, ATG protested DLA’s failure to take the proposed corrective action. On 9 October 2012, DLA posted a notice on FedBizOps indicating that award was made to Trident on 11 September 2012. DLA also notified

ATG of the award by email on 9 October 2012. GAO dismissed the protest as academic on 31 October 2012. (B-407094.2) On 23 October 2012, ATG protested the price evaluation used for the corrective action. This protest was dismissed on 31 October 2012 as untimely. (B-407094.3) On 22 February 2013, ATG protested Trident's performance of the contract. GAO dismissed the protest on 26 February 2013, stating that "it raise[d] a matter of contract administration over which we do not exercise jurisdiction." (B-407094.4) (Gov't mot., ex. 3)

3. On 5 March 2013, Ms. Violy C. Pajarillo, ATG's manager for U.S. Military Support in Kuwait, appealed to this Board. The pleading filed with the notice of appeal stated, in part, as follows:

Per the Contract Disputes Act (41 U.S.C. §§ 7101-7109), its Charter, or other remedy-granting provisions, Alalamiah Technology Group (ATG) would like to bring to the attention of the Armed Services Board of Contract Appeals the following issue in Kuwait, specifically at Camp Arifjan and other Camps in Kuwait.

4. On 9 March 2013, Ms. Pajarillo dropped off a packet of documents to the USARCENT Inspector General Office. Copies were also provided to DLA. According to Ms. Pajarillo, the documents voiced--

[C]oncern[s], irregularities, and possible illegalities by the Defense Logistics Agency/DAPS (DLA), Arifjan Contracting office and Trident Company....

The documents show many controversial issues and factual actions taken by the Arifjan DLA Contracting office, and Trident Company....

....

I have come to the conclusion, shown by factual evidence, that the Arifjan Contracting office and DLA did not operate within the legal bounds of the laws and Federal Codes.

(Bd. corr. file, app. email dtd. 12 March 2013)

5. On 15 April 2013, the government moved to dismiss the appeal for lack of jurisdiction, alleging that the Board lacks jurisdiction over bid protests. Appellant responded by submitting additional documents.

DECISION

ATG is a disappointed bidder for a contract to provide printer/copier devices for various Department of Defense installations in Kuwait. DLA awarded the contract to Trident Engineering on 11 September 2012. ATG filed four bid protests. ATG's last protest, which was filed on 22 February 2013, alleged that Trident was not fulfilling its obligations under the contract, namely that it was not installing the devices. GAO dismissed the protest on 26 February 2013 (B-407094.4) stating that "it raise[d] a matter of contract administration over which we do not exercise jurisdiction." (SOF ¶ 2)

ATG appealed to this Board on 5 March 2013 apparently in the belief that we exercise jurisdiction over all matters of contract administration. In its pleading, ATG voices concerns about possible irregularities and illegalities by DLA, the Arifjan Contracting Office and Trident. ATG does not describe these concerns in detail. However, it asserts that it believes that the Arifjan Contracting Office and DLA did not operate within the legal bounds of the law and Federal Codes.

Our jurisdiction is limited by the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109. Under the CDA, our jurisdiction is limited to contracts between the government and a contractor. Section 7101(7) defines a contractor as a party to a government contract other than the government. Since ATG lost the award to Trident, at least in this matter, ATG is not a party to a government contract. Thus, we lack jurisdiction over the appeal. *E.g.*, *Clark Construction Co.*, ASBCA No. 53914, 10-1 BCA ¶ 34,346; *Charles Hartlerode*, ASBCA No. 52634, 02-1 BCA ¶ 31,716 at 156,705 (CDA limits our jurisdiction to contracts between the government and a contractor); *J&H Building Maintenance Co.*, ASBCA No. 33433, 87-1 BCA ¶ 19,465 at 98,379 (Board lacked jurisdiction over an offer for a contract since it was not an awarded contract); *Disneyland Landscaper*, ASBCA No. 32496, 86-3 BCA ¶ 19,215 at 97,182 (Board lacks jurisdiction over appeal because appellant was not awarded the contract).

The appeal is dismissed for lack of jurisdiction.

Dated: 18 September 2013


ELIZABETH A. TUNKS
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)

I concur



MARK N. STEMPLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



MICHAEL T. PAUL
Administrative Judge
Acting Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 58582, Appeal of Alalamiah Technology Group Co. (K.S.C.C.), rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals