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**Comptroller General
of the United States**

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

Decision

Matter of: Kloppenburg Enterprises, Inc.

File: B-294709

Date: December 10, 2004

Bruce Kloppenburg for the protester.

William K. Walker, Esq., Walker Reausaw, for Alutiiq Management Services, LLC, the intervenor.

Robert Schildkraut, Esq., Department of Defense Education Activity, for the agency. Charles W. Morrow, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester is not prejudiced by the award of a contract to a contractor whose office for the administration of the contract was not registered in the central contractor registration (CCR) database at the time of the award, where the contractor's corporate office was registered in the CCR database before award, the contracting officer confirmed before award that the contractor would promptly register its administering office, and the awardee did so.

2. In a negotiated procurement in which technical merit was stated to be more important than price, selection of the lower priced proposal was proper where the protester's and the awardee's proposals were found technically equal.

DECISION

Kloppenburg Enterprises, Inc. protests the award of a contract to Alutiiq Management Services, LLC under request for proposals (RFP) No. HE1254-04-R-0020, issued by the Department of Defense Education Activity (DoDEA) for school bus drivers and safety attendants in Guam.

We deny the protest.

The RFP provided for the award of a fixed-price contract for a base year with 2 option years for school bus drivers and safety attendants to transport students from schools operated by DoDEA for dependents of military service members and civilian employees in Guam. See RFP amend. A001, at 7. Among other things, the

RFP required that offerors furnish a Data Universal Numbering System (DUNS) number and be registered in the central contractor registration (CCR) database. Id. at 113. A DUNS number (used as the Contractor Identification Number in federal contracts) is assigned by Dun and Bradstreet Information Services, and different DUNS numbers are assigned for each of a contractor's differing locations or addresses or legal divisions.¹ The CCR is a database used to collect and manage contractor information, including taxpayer identification numbers and electronic fund transfer information.² See Central Contractor Registration Handbook (May 2004) at 3.

Offerors were informed that award would be made on a best-value basis considering technical, past performance, and price. The RFP stated that the technical and past performance factors were equally important and together were more important than price. See RFP amend. A001, at 114-18.

The agency received four proposals, including those of Kloppenburg and Alutiiq (the incumbent contractor and an Alaskan Native Corporation). Alutiiq's proposal of \$2,420,502 was the lowest-priced offer, and Kloppenburg's proposal of \$2,865,076 was next lowest-priced offer.³ The agency's technical evaluation team evaluated the proposals against the evaluation factors, by identifying strengths and weaknesses in each proposal and assigning a rating to each technical proposal. Kloppenburg's and Alutiiq's proposals were both rated exceptional under the technical factor and good under the past performance factor, and were considered technically equal. Agency Report (AR), Tab 20, Technical Evaluation Report, at 2. In addition, the firms' proposed prices were determined to be fair and reasonable. See AR, Tab 21, Source Selection Memorandum, at 2.

Award was made to Alutiiq on the basis of that firm's low price, and Kloppenburg protested the award to the agency, complaining, among other things, that Alutiiq did not have a DUNS number and was not registered in the CCR database at the time of award and that the RFP should have provided for electronic submission of

¹ Agencies are required to establish and maintain records on all procurements exceeding \$25,000 in the Federal Procurement Data System. See Federal Acquisition Regulation (FAR) § 4.601. Contracting officers are requested to identify and report DUNS numbers (Contractor Identification Numbers) for successful offerors. "If the successful offeror does not provide its [DUNS] number, the contracting officer must contact the offeror and assist them in obtaining the DUNS number." See FAR § 4.602(d).

² Prospective contractors are required to be registered in the CCR database prior to award of a contract, except in certain specific circumstances not applicable here. See FAR § 4.1102(a).

³ The government estimate was \$2,375,029.

proposals. DoDEA denied Kloppenburg's agency-level protest, and Kloppenburg filed this protest with our Office.

With respect to Kloppenburg's complaint that Alutiiq did not have a DUNS number and was not registered in the CCR database before award, the record shows that Alutiiq, the incumbent contractor, did in fact have a DUNS number for its main corporate office in Anchorage, Alaska and that office was registered in the CCR database. AR, Tab 23, Alutiiq CCR Registration. Alutiiq proposed to use its Chesapeake, Virginia office to administer the contract and receive contract payments. See Intervenor's Comments at 1. Although that office had its own DUNS number, it was not separately registered in the CCR database. On July 12, prior to award, DoDEA informed Alutiiq that it needed to obtain an additional CCR registration to reflect the address of the office that would receive payments under the contract, and on this same date Alutiiq informed DoDEA that it would "make immediate arrangements with my home office in Anchorage to establish a new CCR registration and cage code for this contract changing the address to our office in Chesapeake, Virginia." AR, Tab 23, E-mail from Alutiiq to DoDEA, July 12, 2004. Award was made to Alutiiq on July 14 based upon Alutiiq's CCR registration for its corporate office, and the contract was modified on July 24 to reflect Alutiiq's new CCR registration for its Chesapeake office. Contract mod. P00001.

Although we recognize that it is the agency's obligation to ensure that prospective contractors are registered in the CCR database before award, see FAR § 4.1102(a), Kloppenburg has failed to establish that it was prejudiced by the award to Alutiiq before the firm's Chesapeake office was registered. Competitive prejudice is necessary before we will sustain a protest; where the record does not demonstrate that the protester would have had a reasonable chance of receiving award but for the agency's actions, we will not sustain a protest, even if deficiencies in the procurement process are found. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, DoDEA made award to Alutiiq only after confirming that Alutiiq's Chesapeake office would promptly register in the CCR database, and Alutiiq did so. Although the agency should have awaited the registration of Alutiiq's Chesapeake office in the CCR database before making award, Kloppenburg has failed to establish that it was prejudiced by this error. See Graves Constr., Inc., B-294032, June 29, 2004, 2004 CPD ¶ 135 at 3.

Kloppenburg also challenges the agency's best-value determination, complaining that DoDEA emphasized Alutiiq's low price over Kloppenburg's allegedly superior skills and past performance. As noted above, DoDEA made award on the basis of price because the two proposals were considered essentially technically equal. Kloppenburg, despite having had the opportunity to challenge the agency's conclusion that the proposals were technically equal, has not disputed the evaluation of proposals or the determination that the proposals were technically equal, other than to state the protester's belief that Alutiiq has no prior experience in bus operations. The record does not support this belief, given that Alutiiq is the

incumbent contractor for this requirement. Because we have no basis to question the reasonableness of DoDEA's determination that the firms' proposals were technically equal, award was properly made to Alutiiq based upon that firm's lower price.

Kloppenburg also complains that the RFP was improperly issued as a commercial item acquisition and did not provide for the use of electronic commerce to receive proposals. These complaints are untimely and are dismissed. Under our Bid Protest Regulations, protests based upon alleged apparent improprieties in a solicitation must be filed prior to the time set for initial proposals. See 4 C.F.R. § 21.2(a)(1) (2004).

The protest is denied.

Anthony H. Gamboa
General Counsel