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Comptroller General  
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United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** Greystones Consulting Group, Inc.

**File:** B-402835

**Date:** June 28, 2010

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Lars E. Anderson, Esq., Justin J. Wortman, Esq., and Maria A. del-Cerro, Esq., Venable LLP, for the protester.

Trisha L. Besselman, Esq., and George W. Griffith, Esq., Department of Homeland Security, Federal Law Enforcement Training Center, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Where contract award under a solicitation set aside for competition among small businesses under the Small Business Administration's section 8(a) program was made to an offeror found to be other than small, and where no small business offeror was eligible for award, there is no basis to object to the agency's decision not to terminate contract immediately, in light of agency's need for uninterrupted services and agency's plan to promptly conduct a new competition.

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### DECISION

Greystones Consulting Group, LLC, of McLean, Virginia, protests the award of a contract to CWU, Inc., of Clearwater, Florida, under request for proposals (RFP) No. HSFLGL-09-R-00004, issued by the Department of Homeland Security (DHS) for roleplayer services at the Federal Law Enforcement Training Center (FLETC), Glynco, California. The RFP was issued as a competitive set-aside for small businesses under the Small Business Administration's (SBA) section 8(a) program. The protester asserts that because the awardee has been found to be other than small with respect to this procurement, the agency must open discussions with the other offerors, make a new award under the RFP, and terminate CWU's contract.

We deny the protest.

In response to the RFP, the agency received four timely proposals that it determined were eligible for evaluation, including those from the protester and CWU. Only CWU's proposal was deemed technically acceptable,<sup>1</sup> and award then was made to the firm. In response to a size status protest by Greystones, the SBA issued a determination, which later was affirmed by the SBA Office of Hearings and Appeals, that CWU is other than small with respect to this procurement. The agency does not dispute CWU's ineligibility; rather, FLETC argues that countervailing reasons make reasonable the agency's decision not to terminate the contract award to CWU at this juncture.<sup>2</sup> Instead, the agency plans to not exercise any option for performance beyond the base year period and to "resolicit with due diligence" to make a new contract award. Memorandum of Law at 3.

We view it as inconsistent with the integrity of the procurement system and the intent of the Small Business Act, 15 U.S.C. §§ 631-657a (2006), for an agency to allow a firm to continue performing a contract where the firm was determined after award to be other than small, unless there are countervailing reasons for allowing the award to remain in place. See, e.g., ALATEC, Inc., B-298730, Dec. 4, 2006, 2006 CPD ¶ 191 at 5-6. A key consideration is whether there is another offeror in line for award who can step in and perform if the contract is terminated. Compare ALATEC, Inc., supra (sustaining protest where another offeror was eligible for award and there were no countervailing reasons to leave in place award to an other than small business) with Landmark Constr. Corp., B-281957.3, Oct. 22, 1999, 99-2 CPD ¶ 75 at 3 (where, in order to meet its ongoing needs, and with no other offeror eligible to step in and perform the contract, agency reasonably left in place award to an other than small business until recompetition was completed and new contract awarded).

In this case, since all three remaining proposals (including the protester's) were found unacceptable, there is no offeror to which award could be made if CWU's contract were terminated at this juncture. In this regard, as noted above, Greystones does not challenge the agency's finding that its proposal was unacceptable, and concurs that the agency has a legitimate need for uninterrupted roleplayer services, such that continued performance by CWU is required to meet the agency's needs.

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<sup>1</sup> The protester has not challenged the evaluation of its proposal as unacceptable.

<sup>2</sup> The agency also argues that the protester is not an interested party to bring this protest, because the agency found the protester's proposal unacceptable. We disagree. The awardee was determined to be the only eligible offeror that had submitted an acceptable proposal, and, if the protest were sustained, the agency would be faced with resoliciting the requirement. Because the protester would be eligible to compete on such a resolicitation, it is an interested party, notwithstanding the fact that its proposal was evaluated as unacceptable. See Executive Protective Security Serv., Inc., B-299954.3, Oct. 22, 2007, 2007 CPD ¶ at 3 n.3.

Under these circumstances, we see no basis to object to the agency's decision not to terminate CWU's contract. Landmark Constr. Corp., supra.<sup>3</sup>

The protester's challenge focuses on the method by which the agency proposes to select a new contractor in place of CWU. As noted above, the agency plans to not exercise the option year of the contract and to resolicit with due diligence in order to make a new contract award. The protester asserts that the agency instead should reopen the competition, conduct discussions with the three offerors whose proposals were evaluated as unacceptable, and make award to one of those firms. Such a course, the protester asserts, would lead more quickly to replacing CWU with a small business eligible under the current solicitation.

The agency states that it will take approximately 6 months to conduct a recompetition; we see no basis to conclude that this reprocurement timetable is unreasonable given the nature of the procurement here. See id. Moreover, reopening the original solicitation, instead of conducting a new competition, would exclude new offerors as well as CWU. There is no basis for restricting the competition in this manner, especially given that three of the four proposals received were found to be technically unacceptable. Further, we see no basis to conclude that, in lieu of its plan to conduct a reasonably prompt recompetition, the agency is required to open discussions in the hope that one or more of the remaining offerors can remedy the deficiencies in their proposals such that they would be eligible for award under the RFP.

In sum, we see no basis to challenge the reasonableness of the agency's decision to leave in place the award to CWU, given the FLETC's need for continuing roleplayer services and its plan to award a new contract after holding a reasonably prompt recompetition.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>3</sup> The protester argues that Landmark is distinguishable from this protest because, in Landmark, the agency agreed to issue no new delivery orders under the awardee's indefinite-delivery/indefinite-quantity contract, while contract performance here is ongoing. We disagree. CWU's continued performance is similar to the situation in Landmark, where the awardee was permitted to complete performance of delivery orders that had already been issued.