



## Decision

**Matter of:** Acclaim Systems, Inc.

**File:** B-421379; B-421379.2

**Date:** February 10, 2023

---

Kailash L. Kalantri for the protester.

Jon J. Gottschalk, Esq., Department of Health and Human Services, for the agency.  
Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest challenging actions by a non-profit organization, the Association of Food and Drug Officials, is dismissed because the procuring entity is not a federal agency as defined by the Federal Property and Administrative Services Act of 1949 and therefore the challenged actions are not matters within GAO's bid protest jurisdiction.

---

### DECISION

Acclaim Systems, Inc. (Acclaim), a small disadvantaged business, of Feasterville, Pennsylvania protests its non-selection for award under request for proposal (RFP) No. AFDO-22-001, issued by the Association of Food and Drug Officials (AFDO), located in York, Pennsylvania, for information technology (IT) services to design, develop, and manage a national regulatory technology platform for agriculture and public health. The protester contends that AFDO performed unreasonable technical evaluations that resulted in a flawed selection decision. The protester also alleges AFDO engaged in anti-competitive behavior.

We dismiss the protest.

### BACKGROUND

AFDO is “a well-recognized national non-profit organization that represents state, territorial, and local food protection regulatory agencies including the agencies that regulate produce, manufactured foods, and retail foods.” Request for Dismissal

attach. 1, RFP at 6.<sup>1</sup> Using funding from a cooperative agreement between it and the Department of Health and Human Services, Food and Drug Administration (FDA), AFDO issued the instant solicitation on June 27, 2022. *Id.* at 1, 4-7. AFDO sought competitive proposals for an IT “solution and a team of professionals to design and develop the System for Agriculture, Food, Health, E-Inspections and Registration (SAFHER) solution, a national regulatory technology platform for agriculture, and public health.” *Id.* at 7. The RFP also indicated that the AFDO would contract with the successful offeror to implement and manage the proposed solution. *Id.* at 7, 9. Proposals were to be evaluated in accordance with the solicitation’s evaluation process.<sup>2</sup> *Id.* at 15, 34.

Acclaim submitted its proposal to AFDO and was subsequently notified that it had not been selected for award. Protest at 1. This protest followed. After receiving a debriefing from AFDO, the protester filed additional protest allegations.

## DISCUSSION

The protester argues that AFDO received federal funding from the FDA for this procurement and that the FDA was involved, directly or indirectly, in conducting it. Protest at 1; Response to Request for Dismissal at 1. The agency responded to the protest and requested dismissal on the basis that our Office lacks jurisdiction to review Acclaim’s challenge because AFDO is not a federal agency. Request for Dismissal at 1-2. For the reasons discussed below, we agree with the agency.

The statutory authority of this Office to decide bid protests of procurement actions is set forth in the Competition in Contracting Act of 1984 (CICA). 31 U.S.C. §§ 3551-3557. Since the passage of CICA, our jurisdiction has not been based on the expenditure of appropriated funds; instead we look to our statutory charge to decide protests of procurements conducted by federal agencies. *Information Experts, Inc.*, B-413887, B-413887.2, Dec. 30, 2016, 2017 CPD ¶ 16 at 5. Specifically, CICA defines a protest as a written objection by an interested party to a solicitation or other request by a federal agency for offers for a contract for the procurement of property or services, or an award or proposed award of such a contract. 31 U.S.C. § 3551(1). CICA adopted the definition of a federal agency set forth in the Federal Property and Administrative Services Act of 1949 (FPASA), 40 U.S.C. § 102(5). See 31 U.S.C. § 3551(3). FPASA defines a federal agency as “an executive agency or an establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol, and any activities under the direction of the Architect of the Capitol).” 40 U.S.C. § 102(5). Accordingly, our threshold jurisdictional concern is

---

<sup>1</sup> Citations to the record use the Adobe PDF pagination of documents submitted by the parties.

<sup>2</sup> The evaluation process, which was described in RFP attachment B, was not provided to our Office by either party. This information, however, is irrelevant to our decision.

whether the procurement at issue is being conducted by a federal agency. *S.E. James & Co.*, B-415733, Feb. 7, 2018, 2018 CPD ¶ 69 at 2.

Here, the record shows that the AFDO issued the RFP and Acclaim submitted its proposal to AFDO. RFP at 4 (“[AFDO] is the entity issuing the SAFHER RFP.”). AFDO advised the protester that it was not selected for award and provided the debriefing.

As noted, our jurisdiction is limited to procurements of federal agencies. AFDO is not a federal agency as defined by CICA and the protester does not contend that it is. While FDA executed a cooperative agreement with AFDO that provides funding for the procurement, nothing in the record demonstrates FDA involvement in the procurement other than providing funding via the cooperative agreement. Accordingly, since the procuring entity here is not a federal agency, we are without jurisdiction to consider the protest. *Kimo Constructors Inc.*, B-416162 *et al.*, Apr. 23, 2018, 2018 CPD ¶ 148 at 2-3 (GAO has no bid protest jurisdiction where the procuring entity is not a federal agency.).

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel