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# Decision

**Matter of:** Jefferson Consulting Group, LLC

**File:** B-421775.5

**Date:** November 15, 2024

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## DIGEST

Protest challenging the exclusion of the protester’s proposal from consideration for award under a solicitation that was set aside for small businesses is denied where the protester had recertified as other than small in accordance with federal regulations.

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## DECISION

Jefferson Consulting Group, LLC, a small business of Washington, District of Columbia, protests the General Services Administration’s (GSA) exclusion of Jefferson’s proposal from consideration for award under request for proposals (RFP) No. 47QRCA23R0001. GSA issued the RFP for the award of multiple indefinite-delivery, indefinite-quantity governmentwide acquisition contracts for a variety of services-based solutions, known as One Acquisition Solution for Integrated Services Plus (OASIS+). Jefferson contends that the agency’s decision to remove its proposal from consideration for award is improper because GSA lacks the authority to decide that Jefferson is not a small business.

We deny the protest.

## BACKGROUND

The agency issued the solicitation on June 15, 2023. Agency Report (AR), Tab 4, RFP at 1. The OASIS+ acquisition program is intended “to provide Government agencies with total integrated solutions for a multitude of services-based requirements on a global basis.” *Id.* at 21. The family of OASIS+ services contracts includes six distinct indefinite-delivery, indefinite-quantity (IDIQ) contract vehicles for different

socioeconomic programs (*i.e.*, unrestricted, small business, woman-owned small business, 8(a), service-disabled veteran-owned small business, and Historically Underutilized Business Zone). *Id.* at 12. The small business category, relevant here, was organized into the following seven domains: management and advisory; technical and engineering; research and development; intelligence services, environmental services; facilities; and logistics.<sup>1</sup> RFP at 23.

The solicitation provided that a proposal would be selected for award if the proposal was submitted by a qualifying offeror<sup>2</sup> and the proposal received at least 36 of the 50 available credits for a specified domain. RFP at 202. Offerors could earn credits in the following evaluation elements: qualifying project experience; federal prime contractor experience; systems, rates, and clearances; certifications; and past performance. *Id.* at 197. The credits available for each elevation element varied by domain, and the RFP included a qualifications matrix and scorecard for each domain. *Id.* The RFP anticipated the award of an unlimited number of contracts. RFP at 194, 196.

As relevant here, the solicitation advised that contractors would be allowed to compete only under the contract line item numbers (CLINs) “where they represented (and subsequently re-represented) as a small business concern for the corresponding size standard, and were otherwise eligible under the socioeconomic contract vehicle.” RFP at 22. The solicitation included various other references to the fact that offers were to be solicited only from small business concerns. The following statement is included four times in different sections of the solicitation: “Offerors will not be awarded any Domain CLINs in which *they represent their size as other than small* unless an exception to affiliation exists as set forth in 13 C.F.R. § 121.103(b).” RFP at 23, 84, 151, 195 (emphasis added).

Proposals were due no later than October 20, 2023. RFP at 143. Jefferson submitted timely proposals for the management and advisory domain and the technical and engineering domain. Protest at 5. On July 10, 2024, nearly 9 months after proposals were submitted, the protester sent a letter to the agency informing it that Jefferson was under new ownership and that the firm was consequently recertifying its status as other than small. AR, Tab 5, Jefferson Notification at 1. In that letter, the protester quoted 13 C.F.R. § 121.404(g)(2)(iii) to demonstrate its eligibility for award: “If the merger, sale or acquisition (including agreements in principal) occurs more than 180 days after the

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<sup>1</sup> An offeror was permitted to submit a proposal for more than one domain. See RFP at 145. The protester submitted proposals for the management and advisory domain and the technical and engineering domain. Protest at 1.

<sup>2</sup> The RFP defined a qualifying offeror as an offeror that met the following criteria: (1) is determined to be responsible, (2) submits a proposal that confirms to the RFP requirements, (3) meets all technical requirements of the RFP, (4) submits fair and reasonable pricing, and (5) is otherwise eligible for award. RFP at 196.

date of an offer, award can be made, but it will not count as an award to small business.”<sup>3</sup> *Id.*

On July 29, the contracting officer documented the agency’s decision to exclude Jefferson from further consideration for award “as they no longer are considered [a] small business[] and it is not in the best interest of the Government to make an award to an [other than small business] under a Total Small Business set aside vehicle.” AR, Tab 8, Size Change Memo at 2. The contracting officer noted that he had confirmed with the Small Business Administration (SBA) that 13 C.F.R. 121.404(g)(2)(iii) grants permissive authority to the contracting officer “to either make an award or withhold award.” *Id.* On July 30, GSA notified Jefferson that its proposal had not been selected for award because, if an award were to be made to Jefferson, it would not count as a small business award toward the agency’s small business contracting goals. AR, Tab 9, Unsuccessful Offeror Letter at 3. On August 7, this protest followed.

## DISCUSSION

The protester challenges the agency’s removal of its proposal from consideration for award. Jefferson argues that GSA exceeded its authority by declaring Jefferson other than small and challenges the agency’s application of 13 C.F.R. § 121.404(g)(2)(iii). Protest at 7-11. The protester asserts that its previous small business size status should control, contends that “recertification did not affect Jefferson’s initial size status certification,” and argues that GSA’s reliance on Jefferson’s recertification as other than small constitutes an inappropriate size status determination. Protest at 8; Comments at 4-5.

In support of its position, the protester contends that, pursuant to 13 C.F.R. § 121.404(g)(2)(iii), it is still eligible for award because Jefferson’s change in ownership occurred on July 1, more than 180 days after Jefferson submitted its initial proposal. Protest at 9-11. The protester argues that “nothing in 13 C.F.R. 121.404(g)(2)(iii) suggests that GSA has discretion to exclude Jefferson from the competition.” *Id.* at 10; see Comments at 11-12.

The agency responds that it did not determine the size status of Jefferson; rather, it relied on the protester’s recertification as other than small. Contracting Officer’s Statement (COS) at 13; Memorandum of Law (MOL) at 11-12. GSA asserts that Jefferson’s size recertification was never in controversy, and there was no need to contest the recertification via referral to the SBA. MOL at 12.

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<sup>3</sup> An award being counted as an award to small business means that the agency can consider that contract towards fulfilling its small business contracting goals. See *Washington Bus. Dynamics*, B-421953, B-421953.2, Dec. 18, 2023, 2023 CPD ¶ 286 at 11 (“If the transaction occurs more than 180 days after the concern’s offer, then . . . the concern is eligible for award of a set-aside procurement, but the agency cannot count the award towards its small business subcontracting goals.”).

The agency also responds that its decision to eliminate Jefferson's proposal from consideration for award is consistent with SBA's regulations. Based on guidance it received from the SBA, the agency argues that 13 C.F.R. § 121.404(g)(2)(iii) permits an award to a business that has recertified as other than small pursuant to a merger, sale or acquisition occurring more than 180 days after the date of an offer, but the agency is not required to make the award to such a firm. MOL at 8.

Resolution of this protest turns on whether, under these facts, SBA regulations required GSA to make award to Jefferson, an other-than-small business.

On this record, we agree with the agency that its decision to eliminate the protester's proposal from consideration for award is supported by 13 C.F.R. § 121.404. Where, as here, the language of a regulation is plain on its face, and its meaning is clear, there is no reason to move beyond the plain meaning of the text. *Mechanix Wear, Inc.*, B-416704, B-416704.2, Nov. 19, 2018, 2018 CPD ¶ 395 at 5.

Here, the relevant SBA regulation states the following with respect to determining the size status of a business concern:

A concern that represents itself as a small business and qualifies as small at the time it submits its initial offer (or other formal response to a solicitation) which includes price is generally considered to be a small business throughout the life of that contract. . . . The following exceptions apply to this paragraph (g): . . . If the merger, sale or acquisition occurs after offer but prior to award, the offeror must recertify its size to the contracting officer prior to award. If the merger, sale or acquisition (including agreements in principle) occurs within 180 days of the date of an offer relating to the award of a contract, order or agreement and the offeror is unable to recertify as small, it will not be eligible as a small business to receive the award of the contract, order or agreement. If the merger, sale or acquisition (including agreements in princip[le]) occurs more than 180 days after the date of an offer, award *can be made*, but it will not count as an award to small business.

13 C.F.R. 121.404(g), (g)(2)(iii) (emphasis added).

Thus, 13 C.F.R. § 121.404(g) establishes the baseline rule that size is determined at the time of initial offer but includes recertification exceptions to this rule. See *Washington Bus. Dynamics, supra* at 9. The relevant recertification exception here states that "award *can be made*" if, as here, a merger, sale or acquisition occurs more than 180 days after the date of an offer. 13 C.F.R. § 121.404 (g)(2)(iii) (emphasis added). The plain language of the regulation is permissive, allowing the agency to make award without requiring it to do so, while warning that such an award would not count as an award to small business. *Id.* Despite the protester's argument that the agency was required to consider Jefferson as a small business even after it had recertified as other than small, the language of the regulation does not mandate that Jefferson receive an award under a small business set-aside. The regulation does not state that the agency

“shall” or “must” make award; it states that the agency *can* make award in this situation. 13 C.F.R. § 121.404 (g)(2)(iii).<sup>4</sup> Thus, the plain language of the SBA regulation contradicts the protester’s assertion that “nothing in 13 C.F.R. § 121.404(g)(2)(iii) suggests that GSA has discretion to exclude Jefferson from the competition.” Protest at 10. The plain language of the regulation is facially irreconcilable with the protester’s interpretation.

It is undisputed that Jefferson’s change in ownership, which required it to recertify its size status, occurred on July 1, more than 180 days after Jefferson submitted its initial proposal. See protest at 9-11; AR, Tab 5, Jefferson Notification at 1. As a result, the agency decided not to award a contract to the protester because such an award would not count as an award to a small business. MOL at 10. The RFP in numerous places explicitly provided for award to be made to businesses that self-certified their size status as small. This includes section M, Evaluation Factors for Award, advising that “under the RFPs that are set aside for small business concerns, the firm would be awarded only the Domain CLINs in which the entity represents that it is a small business concern” and added that offerors “will not be awarded any Domain CLINs in which they represent their size as other than small unless an exception to affiliation exists. . . .” RFP at 195; see *a/so* RFP at 22, 23, 84, 85-86, 151. As previously stated, SBA regulations give GSA discretion to choose whether to award a contract to Jefferson, given the timing of Jefferson’s change in ownership and subsequent size recertification. 13 C.F.R. § 121.404 (g)(2)(iii). In sum, we agree with the agency that its decision to eliminate the protester’s proposal from consideration for award is reasonable and in accordance with applicable regulation.

This protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>4</sup> We also note that the second sentence of this regulatory exception--concerning businesses that are unable to recertify as small when a merger, sale or acquisition occurs within 180 days of an offer--explicitly addresses an offeror’s eligibility by stating that such an offeror is not eligible to receive award. 13 C.F.R. § 121.404 (g)(2)(iii). In contrast, the portion of the regulation at issue here does not address eligibility. *Id.* Rather, it merely permits the agency, in its discretion, to make award, notwithstanding the actual size of an offeror that recertifies as other than small more than 180 days after the date of an offer. See *id.* If SBA wished to address an offeror’s eligibility, rather than the agency’s discretion to make award, it could have included language explicitly addressing an offeror’s eligibility in this situation, as it did in the prior sentence.