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# Decision

**Matter of:** Synchronix Information Strategies, LLC

**File:** B-414068.6

**Date:** December 22, 2017

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David S. Cohen, Esq., John J. O'Brien, Esq., Laurel A. Hockey, Esq., and Daniel Strouse, Esq., Cohen Mohr LLP, for the protester.  
Scott M. McCaleb, Esq., Craig Smith, Esq., and George E. Petel, Esq., Wiley Rein LLP, for Lorenz International, LLC, an intervenor.  
Christine Simpson, Esq., Department of Health and Human Services, for the agency.  
Peter D. Verchinski, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

A protester that is a large business is not an interested party to challenge the agency's evaluation of the small business awardee's proposal under a small business set-aside.

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## DECISION

Synchronix Information Strategies, LLC, a large business of Wilmington, Delaware, protests the award of a contract to Lorenz International, LLC, a small business, by the Department of Health and Human Services, Food and Drug Administration (FDA), under request for proposals (RFP) No. 16-223-SOL-00073, issued as a small business set-aside for software licenses, maintenance, and support services and other activities associated with implementing an Electronic Common Technical Document (eCTD) validation and review software. Synchronix challenges the agency's evaluation of Lorenz's proposal and source selection decision.

We dismiss the protest on the basis that the protester is not an interested party.

The FDA issued the RFP on July 1, 2016, as a combined synopsis/solicitation under the commercial item provisions of Federal Acquisition Regulation (FAR) subpart 12.6.<sup>1</sup>

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<sup>1</sup> The history of this procurement has previously been set forth in our decision, [Synchronix Info. Strategies, LLC](#), B-414068.4, Sept. 8, 2017, 2017 CPD ¶ 283, and relevant aspects of the history are repeated here.

The solicitation was set aside exclusively for small businesses. Two offerors, GlobalSubmit and Lorenz, submitted proposals in response to the RFP by the closing date. The agency made award to Lorenz on September 30, and GlobalSubmit timely protested the award decision. In response, the agency notified our Office of its intent to take corrective action on December 6. On December 8, our Office dismissed GlobalSubmit's protest as academic. GlobalSubmit, Inc., B-414068 et al., Dec. 8, 2016 (unpublished decision).

On April 25, 2017, the agency informed the offerors that it was requesting new proposals. The agency explained that, as part of the new proposals, offerors were also to submit new certifications of their status as a small business. Following this letter, GlobalSubmit requested that the agency remove the language requiring offerors to resubmit certifications. GlobalSubmit explained that the firm qualified as a small business at the time of the original proposal, but the firm could no longer re-certify as a small business since GlobalSubmit's assets had been purchased by Synchronenix, a large business, such that the two companies were affiliated as of March 14, 2017.

The agency did not remove the language requiring offerors to resubmit certifications, and Synchronenix timely protested the terms of the solicitation to our Office.<sup>2</sup> The firm argued that the agency no longer had a reasonable expectation that it would receive two offers from small businesses, and thus the agency was required to withdraw the set-aside. Synchrogeneix Info. Strategies, LLC, B-414068.4, Sept. 8, 2017, 2017 CPD ¶ 283. Our Office denied Synchronenix's protest on September 8.

On Friday, September 29, the agency reaffirmed its award to Lorenz. Synchronenix then filed this protest, arguing that Lorenz's software "poses considerable risk," such that Lorenz's software should have been found to be technically unacceptable. Protest at 5.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1); Cattlemen's Meat Co., B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. A protester is an interested party

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<sup>2</sup> Synchronenix's protest also argued, among other things, that the agency could not make award to Lorenz because the firm's software "poses considerable risk" and therefore the agency should find the software to be technically unacceptable. However, as the agency had not yet conducted its evaluation of Lorenz's proposal and made an award, we found such a challenge to be premature. Accordingly, our Office dismissed this protest ground.

to challenge a procurement where there is a reasonable possibility that its proposal would be in line for award if the protest were sustained. See TENICA & Assocs., LLC et al., B-411173.10 et al., Mar. 2, 2016, 2016 CPD ¶ 79 at 7. Conversely, a protester is not an interested party where it would not be in line for contract award were its protest to be sustained. See id.

As a general rule, a large business is not an interested party to challenge an award under a solicitation set aside for small businesses. See Creative Computing Solutions, Inc., B-408704, B-408704.2, Nov. 6, 2013, 2013 CPD ¶ 262 at 4 (finding large business not an interested party to protest the award of a contract under a solicitation set aside for small businesses); see American Med. Response of Conn., Inc., B-278457, Jan. 30, 1998, 98-1 CPD ¶ 44 at 3; see Ace-Federal Reporters, Inc., B-241309, Dec. 14, 1990, 91-2 CPD ¶ 438 at 6. The record reflects, and Synchrogenix concedes, that it is no longer eligible to participate in this procurement as a small business. As such, the protester is not eligible for award, and under our general rule, it is not an interested party for purposes of filing a protest here.

Synchrogenix argues that it, nonetheless, should be viewed as an interested party because it is challenging the agency's award under a small business set-aside where there is only one offeror remaining in the competition. Thus, according to Synchrogenix, if its challenge to the agency's selection decision were sustained, there would be no remaining small business offerors in the competition, and the agency could resolicit the requirements on an unrestricted basis. In support of its position, the protester points to decisions of our Office that show exceptions to the general rule that a large business is not an interested party to challenge the award decision under a small business set-aside. In this regard, our Office has found that a large business may challenge award to a small business set aside when the agency made award on a sole source basis. See Martin Elecs., Inc., B-211406, Apr. 24, 1984, 84-1 CPD ¶ 465 at 1-2; see generally Wespercorp, Inc., B-220665, Feb. 18, 1986, 86-1 CPD ¶ 167 at 3-4 (a small business could challenge an award under the Small Business Administration's 8(a) program where award was made on a sole-source basis). Our Office has also found that a large business may challenge the award made under a small business set-aside when there is only one small business bidder and the large business alleges that award was made at an unreasonable price. See Black Hills Refuse Serv., B-228470, Feb. 17, 1988, 88-1 CPD ¶ 151 at 2-3; see U.S. Elevator Corp., B-224237, Feb. 4, 1987, 87-1 CPD ¶ 110.

While we recognize that our Office has found that under very specific and limited circumstances, a large business may challenge the award to a small business under a small business set-aside, we do not view those circumstances as applying here. In this regard, the protester here is neither alleging that the award was made at an unreasonable price, nor that the agency made an improper sole source award. Instead, the protester is challenging the agency's evaluation of the awardee's proposal. As set forth in our decision in Ace Federal, a large business can be viewed as an interested party to challenge the validity of a set-aside decision, and/or to allege that the award was not made at a fair market price. Ace-Federal Reporters, Inc., supra at 3-6. If these

issues are denied, however, the large business is not an interested party to raise issues extraneous to the set-aside decision. Id. at 6; see also Space Services, B-195493, Oct. 22, 1979, 79-2 CPD ¶ 256 at 2; Coleman Transfer and Storage, Inc., B-182420, Oct. 17, 1975, 75-2 CPD ¶ 238 at 2 (Coleman found an interested party to challenge the set-aside eligibility requirement used to exclude it, but was not an interested party to raise “a matter which is extraneous to the eligibility requirement” under which it was excluded). Consequently, we find our decisions are consistent with a determination here that Synchrogenix is not an interested party to challenge the award.

We further note that, under a small business set-aside, the solicitation provides that the competition is restricted to small businesses, and, if a large business thinks that it is improper to set aside the procurement for small businesses, the large business is required to challenge the terms of the solicitation prior to the closing time for receipt of proposals. However, under the protester’s reasoning here, any large business could challenge the award to a small business, if the agency received only one small business offer, by simply asserting that the small business’s proposal should be found unacceptable, or, if there were multiple small businesses remaining in the competition, that all of the small businesses’ proposals should be found unacceptable. This understanding would permit large businesses to undercut the small business set-aside program, and render meaningless the requirement that large businesses must challenge the agency’s determination to set aside a procurement for small businesses prior to closing time. 4 C.F.R. § 21.2(a)(1); Adams and Assocs., Inc., B-409680, B-409681, Apr. 22, 2014, 2014 CPD ¶ 131 at 2-3. We decline to interpret our decisions to support such a result.

We recognize the unique factual circumstances that led to this dispute. That said, our timeliness rules regarding solicitation improprieties are based on the principle that challenges which go to the heart of the underlying ground rules by which a competition is conducted, should be resolved as early as practicable during the solicitation process, but certainly in advance of an award decision if possible, not after. Caddell Construction, Co., Inc., B-401281, June 23, 2009, 2009 CPD ¶ 130 at 3. Such a rule promotes fundamental fairness in the competitive process by preventing an offeror from taking advantage of the government as well as other offerors, by waiting silently only to spring forward with an alleged defect in an effort to restart the procurement process, potentially armed with increased knowledge of its competitors’ position or information. See Blue & Gold, Fleet, L.P. v. United States, 492 F.3d 1308, 1313-14 (Fed. Cir. 2007). It also promotes efficiency by ensuring that concerns regarding a solicitation are raised before contractor and government resources are expended in pursuing and awarding the contract, thus avoiding costly and unproductive litigation after the fact. Id.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel