

Kevin Paul

From: Kang, Jonathan <KangJ@gao.gov>
Sent: Friday, April 11, 2014 1:24 PM
To: Kristen Nowadly - LD2; [REDACTED] Mann Eyester, Laura
Cc: Riback, Katherine I; Protests
Subject: RE: GAO Protest series B-409528

Ms. Nowadly

We have received your correspondence. With regard to your concern about the apparent dissemination of information by parties to the protest, we note that there is no protective order for the protests, and thus there are no restrictions on the parties' ability to share documents or information. As a related matter, we note that various news organizations have requested that our Office provide copies of the SBA memo; in each case, Ralph White, Managing Associate General Counsel for Procurement Law, has advised that we will not do so while a protest is pending, consistent with our policies and public records disclosure rules.

With regard your concern about correspondence by the protesters with other government agencies, this is a matter outside of our jurisdiction. Our rules do not contemplate that we may restrict the ability of parties to a protest to correspond with other government agencies.

Finally, to the extent you request that our Office advise the parties that we have not issued a decision on the merits, this point is hopefully self-evident. Nonetheless, we affirm that we will issue a decision no later than 100 calendar days from the filing of each protest, and note that the acknowledgement of protest notice indicates the 100-day deadline for each protest.

Jonathan L. Kang
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Washington, DC 20548
Tel 202.512.3315
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From: Kristen Nowadly - LD2 [mailto:kristen.nowadly@gsa.gov]
Sent: Friday, April 11, 2014 12:42 PM
To: Kang, Jonathan

[REDACTED]
Subject: Fwd: GAO Protest series B-409528

Mr. Kang,

I am forwarding this e-mail to you in light of Ms. Riback's out of office notice.

Thank you for your attention to this issue.

Kristen M. Nowadly
Assistant Regional Counsel
U.S. General Services Administration
Phone [\(212\) 264-1963](tel:(212)264-1963)
Fax [\(212\) 264-1987](tel:(212)264-1987)

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----- Forwarded message -----

From: **Kristen Nowadly - LD2** <kristen.nowadly@gsa.gov>
Date: Fri, Apr 11, 2014 at 12:35 PM
Subject: GAO Protest series B-409528
To: "Riback, Katherine I" <RibackK@gao.gov>, Protests <protests@gao.gov>
Cc: "Mann Eyester, Laura" <laura.manneyester@sba.gov>

Ms. Riback,

It has come to GSA's attention that one of the remaining protesters in this matter has been widely circulating an e-mail to the Federal community that states that GSA has "violated the Small Business [Jobs] Act" based on SBA's comments (filed April 3, 2014) in this matter.

Protester KPaul filed a protest with GAO and is now asking Federal agencies to end their participation in the subject contract/procurement (and another, current GSA contract that is not the subject of this protest) without waiting for a decision from GAO.

GSA submits that this correspondence

is

highly improper during the pendency of this protest.

For your information and review, the text of the e-mail is included below:

Your agency was identified by the GSA as a participant in the OS3 FSSI. We are writing to inform you of a recently released opinion by the SBA regarding this acquisition vehicle.

In response to a GAO protest, the SBA states that the OS3 is “the epitome of contract consolidation” and thereby must comply with the Small Business Act which requires the completion of a negative impact analysis on small business prior to implementation. ***The SBA concludes that GSA failed to complete this analysis and has therefore violated the Small Business Act.***

The letter also explains that the SBA's procurement center representative has non-concurred with the acquisition as, “GSA's proposed small business evaluation preference results in a de facto small business set-aside but without the requirements normally included in an acquisition set aside for small business.”

GSA has clearly violated the Small Business Act and skirted set-aside requirements with the OS2/OS3 and for these reasons we ask that you reconsider your participation in this acquisition vehicle and reverse any mandates that require purchases be made on it.

Thank you for your consideration.

We also believe that one or more of the protesters have presented SBA's comments as a "ruling" to the small business community and to the press.

We ask the GAO's assistance in directing the protesters to "cease and desist" in these actions, as well as in issuing a notice to the protesters that you will make the final decision on the protest and that the decision has not been made yet.

Ms. Riback, we thank you for your attention to this matter that seriously undermines the GAO protest process and is of utmost concern to GSA.

Respectfully submitted,

Kristen M. Nowadly
Assistant Regional Counsel
U.S. General Services Administration
Phone (212) 264-1963
Fax (212) 264-1987

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