



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
1100 COMMERCE STREET, SUITE 840
DALLAS, TEXAS 75242-0216

July 14, 2014

Office of the Principal Assistant
Responsible for Contracting – Dallas

The Honorable Claire McCaskill
Chairman, Subcommittee on Financial and Contracting Oversight
Committee on Homeland Security and Governmental Affairs
United States Senate
111 Russell Senate Office Building
Washington, DC 20510

Dear Madam Chairman:

This letter responds to your June 30, 2014 letter requesting additional information regarding the U.S. Army Corps of Engineers' (USACE) actions on the renovation of Building 660 at Fort Greely, Alaska. Documentation related to the additional items of request is provided as enclosures to this response.

I have reviewed both your letter to the Small Business Administration (SBA) Office of Inspector General (OIG) dated March 28, 2014, as well the OIG's response to your inquiry. I believe the description in your letter to the SBA OIG to be accurate and fully supported by the documentation associated with the action.

The first requested item identified for submission to the Subcommittee is the 8(a) offer letter for USACE Alaska District Solicitation No. W911KB-13-R-0021, FTG156, Building 660 Repair, Fort Greely, Alaska, sent from the Alaska District to the SBA on August 8, 2013 (Encl 1).

This letter was sent by email to Mr. Sam J. Dickey, District Director, U.S. Small Business Administration, Alaska District Office, with a copy to Mr. David C. Matekovich, Lead Business Opportunity Specialist, SBA, requesting approval for the project to be offered as an 8(a) sole source acquisition. The SBA OIG response states that, "In its offer letter, the USACE asserted that the procurement had not been offered previously as a small business set aside. Based on this information, the SBA accepted the offer. Four days later, after the SBA learned that the procurement had in fact been offered previously for competitive bid, the SBA rescinded its acceptance."

USACE acknowledges that the formal 8(a) offering letter to SBA did not address the previous 100% small business set-aside announcement. The Alaska District interpreted the narrative under paragraph 17 of the formal 8(a) offering letter as being factual due to the previous requirement having been formally cancelled because of lack of funding.

The Alaska District interpreted this request to be a "new" requirement. The record does indicate however, that the contracting officer was clearly acting in good faith in trying to communicate the procurement history to the SBA. The contracting officer's formal 8(a) offering letter "forwarding email" to the approving official states, "This project previously had an acquisition strategy of 100 percent small business set-aside; however, after being put on hold then subsequently provided very late fiscal year-end funding, we have found it necessary to change the strategy to an 8(a) sole source acquisition."

The second requested item identified for submission to the Subcommittee is to provide all correspondence between USACE and the SBA Associate Administrator of Business Development related to the Fort Greely procurement. The following is a listing of all known communication:

On August 16, 2013, Ms. Jackie Robinson-Burnette, Associate Director of Small Business, Headquarters USACE sent a formal memo to Mr. Darryl Hairston, Associate Administrator for Business Development seeking his assistance in reconsidering the August 16, 2013 rescinded 8(a) offering letter for Silver Mountain, LLC (Encl 2).

On August 18, 2013, Ms. Robinson-Burnette followed up with an email to Mr. Hairston seeking his assistance in reconsidering the August 16, 2013 rescinded 8(a) offering letter for Silver Mountain, LLC (Encl 3).

On August 19, 2013, Mr. Hairston responded stating, "I will be happy to review the matter. I will need to see the entire procurement history and a copy of the original offer letter to SBA. Please forward the information as soon as possible." (Encl 3)

On August 19, 2013, Ms. Robinson-Burnette sent the requested information to Mr. Hairston for his consideration. Within this response, Ms. Tracey Pinson, Director, Department of the Army Office of Small Business Programs was copied on the message. (Encl 3)

On August 20, 2013, Mr. Hairston responded stating, "Thank you for your prompt response to my request. I am reviewing the information and hope to be able to provide guidance soon. In response to Mr. Tew's comments regarding SBA's interpretation of interpretation of FAR 19.804-2, it should be noted that we are compelled to comply with the provisions of 13 CFR § 124.504 which states, "SBA will not accept a procurement for award as an 8(a) contract if the circumstances identified in paragraphs (a) through (d) of this section exist (NOTE-only paragraph (a) applies in this case)."" Mr. Hairston goes on to say, "Based on the above, feel free to provide anything you may have in addition that may be considered "under extraordinary circumstances"." (Encl 3)

On August 20, 2013, Ms. Robinson-Burnette responded to Mr. Hairston stating, "The fiscal uncertainty that we've operated in this fiscal year has resulted in tremendous negative impacts to our contracting and SB programs. At the same time, even in the midst of furloughs, we are seeking to meet the needs of our customers (Army soldiers and commanders) because money is being released so late in the year. In this case, an Army 3 star general just received funds to revive this cancelled procurement (6 weeks before the fiscal year end). The project is to build critical emergency and police facilities. We need flexibility from the SBA HQs because this is an extraordinary situation (even though it is not an example of an error like the example in the CFR). In interpreting the CFR, it does not appear to limit "extraordinary" to errors only. (Encl 3)

On August 22, 2013, Ms. Robinson-Burnette sent an email to Mr. Chris, Tew, Alaska District Contracting Chief stating "the SES at the SBA called Ms. [Tracey] Pinson, He will accept the requirement if we offer it to (Taletek). It was offered to this firm first by Army Contracting Command Alaska (Ft. Wainwright DOC). We can pull that 8(a) letter and move forward. However, they will NOT accept award to a different 8(a) firm. They are taking a hard stance on extraordinary and says it must be an error (and loss of funds is not extraordinary)." (Encl 4)

On August 26, 2013, there were a series of email exchanges between Ms. Pinson and Mr. Hairston confirming the agreed to path forward. Ms. Pinson states, "Darryl, I appreciate SBA's consideration and acceptance of our request to negotiate a sole source award with the ANC Tallitek for the Ft. Greely requirement. I provided this information to the USACE and they intend to pursue negotiations accordingly. Thank you again." Ms. Pinson goes on to state, "Just to document the record should we put another offer letter in for Tallitek if so should that go to you?" Mr. Hairston replies, "Thanks Tracey" and "Yes, it should go to the Alaska district office." (Encl 5)

There does not appear to be further communication in the record between USACE and the SBA Associate Administrator of Business Development related to the Fort Greely procurement.

On August 26, 2013, the USACE Alaska District submitted a formal 8(a) offering letter to the SBA for Tatitlek. Paragraph 6 of this document states, "Correspondence between the Small Business Administration (SBA), Associate Administrator for Business Development, Mr. Darryl Hairston, and the USACE HQ Associate Director for Small Business, Ms. [Jackie] Robinson-Burnette indicates acceptance of project FTG156 in the 8(a) program as a sole source procurement is contingent upon selection of Tatitlek Construction Services, Inc. for performance of this project based on the prior offering by the Fort Wainwright Contracting Office." (Encl 6)

On August 29, 2013, the SBA approved the August 26, 2013 offering letter for Tatitek. In their approval, the SBA did not dispute the contracting officer's statement in paragraph 6 of the document that, "...acceptance of the project FTG156 in the 8(a) program as a sole source procurement is contingent upon the selection of Tatitek Construction Services, Inc...." (Encl 7)

As indicated in your letter to the SBA OIG, the proposal from Tatitek was significantly above the government's estimate for the project, the Alaska District was unable to reach a reasonable price determination, and the action was canceled.

I hope this information is sufficient to answer your questions. I stand ready to provide a briefing on events related to this action at your convenience. If you have additional questions, please contact me or your staff may contact Mrs. Patricia Trainer at [REDACTED]

Sincerely,

A handwritten signature in black ink that reads "Denver S. Heath". The signature is written in a cursive style with a large initial "D" and a long horizontal flourish at the end.

Denver S. Heath
Principal Assistant Responsible
for Contracting – Dallas

Enclosures