



Decision

Matter of: Romeo Luxury Customs

File: B-423023

Date: October 21, 2024

Wendell Romeo, for the protester.
Nathaniel S. Canfield, Esq., and Evan D. Wesser, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that the Washington Metropolitan Area Transit Authority (WMATA) improperly rejected the protester's bid as non-responsive is dismissed because GAO does not have jurisdiction to consider protests of procurements by WMATA because it is an interstate compact entity, not a federal agency.

DECISION

Romeo Luxury Customs, a small business of Washington, D.C., protests the award of a contract to First State Manufacturing, of Milford, Delaware, under invitation for bids (IFB) No. 0000009779, issued by the Washington Metropolitan Area Transit Authority (WMATA) for the reupholstery of bus seat assemblies. The protester contends that the agency improperly rejected the protester's bid as non-responsive under the terms of the IFB.

We dismiss the protest because our Office does not have jurisdiction to consider protests of WMATA procurements.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Honeywell Tech. Solutions, Inc.*, B-407159.4, May 2, 2013, 2013 CPD ¶ 110 at 3. As relevant here, CICA defines a protest as a written objection by an interested party to a solicitation or other request by a federal agency for bids or proposals 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), 3553. Thus, our threshold jurisdictional concern is whether the procurement at issue is being conducted by a

federal agency. *Argus Secure Tech., LLC*, B-419422, B-419422.2, Feb. 22, 2021, 2021 CPD ¶ 84 at 4; *S.E. James & Co.*, B-415733, Feb. 7, 2018, 2018 CPD ¶ 69 at 2.

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. 31 U.S.C. § 3551(3) (“The term ‘Federal agency’ has the meaning given such term by section 102 of title 40.”). 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). An executive agency is defined as “an executive department or independent establishment in the executive branch of the Government,” or “a wholly owned Government corporation.” *Id.* § 102(4).

Based on the statutory guidance set forth above, we conclude that WMATA is not a federal agency for the purposes of our bid protest jurisdiction.

As the U.S. Court of Appeals for the District of Columbia Circuit noted in holding that WMATA is not a federal agency as that term is defined in the Administrative Procedure Act (APA), 5 U.S.C. § 701(b)(1), WMATA was created in 1966 through an interstate compact signed by Maryland, Virginia, and the District of Columbia and approved by Congress. *Schindler Elevator Corp. v. Washington Metro. Area Transit Auth.*, 16 F.4th 294, 296 (D.C. Cir. 2021). Because WMATA was created through an interstate compact, the D.C. Circuit concluded that it is an instrumentality and agency of its signatories--*i.e.*, Maryland, Virginia, and the District of Columbia--and not an authority of the federal government. *Id.* at 301-302. Consequently, the D.C. Circuit held that WMATA is not a federal agency under the APA. *Id.* at 302.

While the decision in *Schindler* examined whether WMATA was a federal agency for purposes of the APA and not CICA, the court’s analysis is nevertheless instructive here. As an interstate compact entity, WMATA is not an establishment in the legislative or judicial branch of the federal government. It also is not an executive department or independent establishment in the executive branch of the government, nor is it a wholly owned government corporation. Rather, as the D.C. Circuit pointed out, WMATA is an instrumentality and signatory of the entities that created it, not an authority of the federal government.¹ Accordingly, we conclude that WMATA is not a federal agency as that

¹ The D.C. Circuit further noted that the fact that the District of Columbia is a federal territory ultimately controlled by the Congress did not alter its conclusion in this regard. See *Schindler*, *supra* at 301-302.

term is defined in CICA and FPASA, and consequently that our Office does not have jurisdiction to consider this protest.²

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

² Prior to the enactment of CICA, we also concluded that our Office did not have authority to consider bid protests relative to WMATA operations. *See Square Deal Trucking Co., Inc.*, B-184989, Nov. 18, 1975, 75-2 CPD ¶ 326; *Blake Constr. Co.*, B-185713, Feb. 5, 1976, 76-1 CPD ¶ 76; *Monogram Sanitation Sys., Inc.*, B-186415, May 12, 1976.