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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Inchcape Shipping Services Holding, Ltd.

File: B-402687.10; B-402687.11

Date: December 9, 2013

Craig A. Holman, Esq., Emma V. Broomfield, Esq., and Lauren J. Schlanger, Esq., Arnold & Porter LLP, for the protester.

Walter A.I. Wilson, Esq., Claude P. Goddard, Jr., Esq., R. Clay Hagedorn, Esq., Daniel J. Donohue, Esq., Lauren P. DeSantis-Then, Esq., and Steven J. Weber, Esq., Polsinelli PC, for Multinational Logistic Services Ltd., an intervenor.

Mark W. Golden, Esq., Department of the Navy, for the agency.

Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the award of contracts under repurchase procedures is dismissed where the protester is suspended from contracting. The Government Accountability Office does not review protests that an agency improperly suspended a contractor, as the contracting agency is the appropriate forum for suspension disputes.

DECISION

Inchcape Shipping Services Holding, Ltd. (ISS) of Dubai, protests the award of contracts by the Department of the Navy, United States (U.S.) Fleet and Industrial Supply Center for maritime husbanding support¹ for the Navy and other ships visiting ports in three regions within the Western Pacific and Indian Ocean. Contracts were awarded to Multinational Logistics Services Ltd., (MLS) of Malta, Toll Remote Logistics, and DaeKee Global Co. Ltd., for regions 2, 3, and 4, respectively, as a repurchase of terminated contracts previously awarded to

¹ Husbanding logistics services include, among other things, forklift services, providing shore power, trash and sewage removal, refueling arrangements, force protection for ships, transportation for ship members, the provision of fresh food and water, and payment of port dues.

Glenn Defense Marine-Asia PTE, Ltd., (GDMA) of Singapore. The protester argues that the agency did not follow the proper reprocurement procedures for awarding the contracts.

We dismiss the protest.

BACKGROUND

In 2009, the Navy issued request for proposals (RFP) No. N62649-09-R-0041 for maritime husbanding support for U.S. Navy ships visiting ports and operating in four regions in the Western Pacific and Indian Ocean. The solicitation contemplated the award of contracts for each of the four regions, and offerors were instructed to submit a separate proposal for each region. RFP at 3. GDMA protested the terms of the solicitation, and the protest was denied. Glenn Defense Marine-Asia PTE, Ltd., B-402687.4, B-402687.5, Nov. 19, 2010, 2010 CPD ¶ 277. The contracts for regions 2, 3, and 4 were awarded to GDMA in 2011.²

In September 2013, GDMA was suspended from contracting, and the Navy terminated for cause the contracts held by that firm for regions 2, 3, and 4, under the provisions of Federal Acquisition Regulation (FAR) clause 52.212-4(m). The agency then conducted a reprocurement evaluation and awarded contracts for those services to the second-lowest priced offeror from the competitive range established for each region under the previous solicitation. Contracting Officer's Statement at 4. This protest, filed by ISS, concerns the reprocurement of all three of the husbanding services contracts that were held by GDMA. ISS primarily argues that too much time has passed since the original contracts were awarded for the Navy to properly use the reprocurement authority set forth at FAR Part 49.³

On November 8, during the course of this protest, the Navy requested summary dismissal, arguing that ISS was not an interested party to challenge the awards because its original proposal was excluded from the competitive range, in part, because its security plan had been found unacceptable. On November 14, our Office denied the agency's request, and advised the parties that we would answer the protest on the merits. We further advised the parties that the record provided by

² The contract for region 1 was awarded to MLS. GDMA protested the award to MLS and this protest was denied. Glenn Defense Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3.

³ For the record, the Navy notes that it conducted the reprocurement under the commercial item provisions of FAR part 12.4, which state that "the requirements of Part 49 do not apply when terminating contracts for commercial items and contracting officers shall follow the procedures in this section." Agency Request for Dismissal at 1, citing FAR § 12.403(a).

the agency in its request for dismissal, and by the protester in its response, was adequate to resolve the protest, and that the record did not require further development. On November 27, however, the Navy informed our Office that ISS has been suspended from contracting on November 26. For this reason, the agency requests summary dismissal of the protest.

DISCUSSION

ISS argues that the Navy's request for dismissal should be denied for two primary reasons. First, the protester contends that when our Office advised the parties that the record did not require further development and that we would resolve the protest on the merits based on the existing record, the record was at that point "closed," and the agency was therefore prohibited from submitting further information, including information about ISS's suspension from contracting. The protester argues that ISS had standing to protest the awards to MLS, Toll Remote Logistics, and DaeKee Global Co. Ltd., at the time the record was closed, and that the agency's subsequent suspension "well after the record closed" does not affect the protester's standing or our Office's ability to resolve the protest on the merits. ISS Opposition to Motion to Dismiss (Dec. 2, 2013) at 9. We disagree.

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. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2013). Determining whether a party is interested involves consideration of a variety of factors, including the party's status in relation to the procurement. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id.

An agency may not award a contract to a debarred or suspended contractor. FAR § 9.405. Here, ISS was suspended from contracting by the Navy for an indefinite period of time, and ISS therefore could not be awarded the contracts in the event the protest was sustained. As a result, we conclude that ISS is not an interested party to pursue its protest of the award to MLS, Toll Remote Logistics, and DaeKee Global Co. Ltd. See Triton Elec. Enters., Inc., B-294221 et al., July 9, 2004, 2004 CPD ¶ 139. While the protester contends that the agency was prohibited from filing any additional information with our Office after being advised that we, in effect, advised that the record was "closed," we do not think that the agency was prohibited from advising our Office of the significant new development concerning ISS's suspension.

ISS also argues that its suspension by the Navy was "commenced or accelerated to prevent GAO's decision," concerning the merits of the protester's challenge to the

reprocurement contract. ISS Opposition to Motion to Dismiss (Dec. 2, 2013) at 7.⁴ As our Office has held, however, suspension and debarment of a contractor is a matter of agency contract administration that we do not review. Shinwha Elec., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 4. This is because the FAR sets forth specific procedures for both imposing and challenging a suspension or debarment action, see FAR §§ 9.406-3(b), 9.407-3(b), and, therefore, we have concluded that the contracting agency is the appropriate forum for resolving such disputes. Shinwha Elec., supra, at 4. For this reason, we will not review the protester's allegations concerning the propriety of the suspension, nor do we find such considerations to permit our Office to consider the merits of ISS's protest notwithstanding its suspension from contracting.

The protest is dismissed.

Susan A. Poling
General Counsel

⁴ According to ISS, the suspension had nothing to do with the GDMA-Navy scandal, and instead, stemmed from purported billing irregularities which took place between 2005 and 2008, and of which the Navy has been aware since 2010. ISS Opposition to Motion to Dismiss (Dec. 2, 2013) at 5.