



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Tyonek Worldwide Services, Inc.--Reconsideration

File: B-409326.6

Date: May 15, 2014

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Wade L. Brown, Esq., Department of the Army, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of our Office's decision denying a protest, and finding the protester not an interested party to challenge the evaluation of the awardee's proposal, is denied where requester has not shown that the decision contained errors of fact or law that warranted its reversal or modification; protester's speculation as to the agency's actions had our Office sustained its challenge to the evaluation of awardee's proposal is too tenuous to show the requisite direct economic interest to be considered an interested party.

DECISION

Tyonek Worldwide Services, Inc., of Anchorage, Alaska, requests reconsideration of our decision in Tyonek Worldwide Servs., Inc.; DigiFlight, Inc., B-409326 et al., Mar. 11, 2014, 2014 CPD ¶ 97, in which we denied its protest of the award of a contract to Y-Tech Services, Inc., of Anchorage, Alaska, under request for proposals (RFP) No. W58RGZ-13-R-0030, issued by the Department of the Army, Army Contracting Command, at Redstone Arsenal, Alabama, for aviation maintenance and logistics services. Tyonek argues that our decision incorrectly determined that the firm was not an interested party to challenge the evaluation of Y-Tech's proposal.

We deny the request for reconsideration.

The solicitation provided for the award of the contract on a best value basis, considering three factors: (1) management/technical; (2) cost/price; and (3) past

performance. The management/technical factor was significantly more important than the cost/price factor, which was slightly more important than the past performance factor. To be considered for award, a proposal was required to be rated at least acceptable for the management/technical factor. RFP at 93. The solicitation advised offerors that “[t]he Government reserves the right to award at the contractor[’]s offered price with or without discussions.” Id.

The Army received proposals from seven offerors. The agency engaged in clarifications with the offerors, but did not permit proposal revisions. The Army evaluated the proposals of Tyonek and another firm as unacceptable under the management/technical factor and therefore ineligible for award. The agency also found the proposals of three other offerors ineligible for award. However, the proposal of Y-Tech and a third offeror remained in the competition and the agency decided to award without discussions. The Army awarded the contract to Y-Tech on November 25, 2013.

Tyonek and another firm filed protests in our Office arguing that the Army improperly found their proposals technically unacceptable and ineligible for award. Both firms also protested the evaluation of the awardee’s proposal.

Our decision found that the Army reasonably evaluated the protesters’ proposals as technically unacceptable and ineligible for award. Because we found that the Army’s evaluation was reasonable in this regard, we concluded that Tyonek and the other firm were not interested parties to challenge the evaluation and award to Y-Tech. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2014); see SWR, Inc., B-284710.2, B-284710.3, Nov. 15, 2000, 2000 CPD ¶ 206 at 4 n.1 (where there is another acceptable proposal eligible for award, a protester is not an interested party where it would not be in line for award were its protest sustained).

In its request for reconsideration, Tyonek argues that, if its challenge to the evaluation of Y-Tech’s proposal had been sustained, the Army would not have considered the third offeror to be in line for award, but would instead have held discussions with at least Y-Tech, Tyonek, and the third offeror. Reconsideration Request at 3. As support, Tyonek argues that the Army never stated how it would have proceeded if our Office had sustained the challenges to the evaluation of Y-Tech’s proposal, and the RFP here indicated that discussions were “probable.” Id. at 3-4. Therefore, Tyonek argues, our Office should have inferred that the Army would have held discussions rather than making an award to the third offeror, and thus Tyonek concludes that it was an interested party notwithstanding the third offeror’s existence. Id.

To prevail on a request for reconsideration, the requesting party must either show that our decision contains an error of fact or law, or present information not previously considered, that warrants the decision’s reversal or modification.

4 C.F.R. § 21.14(a); Waterfront Techs., Inc.--Recon., B-403638.4, June 29, 2011, 2011 CPD ¶ 126 at 3. Tyonek's request does not meet this standard.

Under the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-57, 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. 31 U.S.C. § 3551(2)(A); see also Bid Protest Regulations, 4 C.F.R. § 21.0(a)(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. 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.

As our decision explained, the record showed that the Army reasonably evaluated Tyonek's proposal as unacceptable. The evaluation of the third offeror's proposal as acceptable would not have been affected by Tyonek's protest allegations, and that proposal therefore remained in line for award ahead of Tyonek. As a result, Tyonek lacked the direct economic interest required to maintain its protest of the evaluation of Y-Tech's proposal. 4 C.F.R. § 21.0(a); see SWR, Inc., supra; see also MRI Techs., B-407421, B-407421.2, Dec. 28, 2012, 2013 CPD ¶ 17 at 13.

Neither the solicitation language that the government reserved the right to award "with or without discussions,"¹ RFP at 93, nor the failure of the Army to expressly affirm that it would have considered the third offeror's proposal for award, provided the direct economic interest that is necessary for our Office to consider Tyonek's challenge to the evaluation of Y-Tech's proposal. Rather, once we concluded that Tyonek's proposal was properly evaluated as unacceptable, only the third offeror who remained in the competition had a direct economic interest in challenging the evaluation of Y-Tech. In our view, Tyonek's speculation concerning what might have occurred had its challenge to the evaluation of Y-Tech's proposal been sustained is too tenuous to show the direct economic interest required to be considered an interested party to raise such a challenge. We conclude that the firm's request for reconsideration does not show an error of law or fact in our prior decision that warrants its reversal or modification.

¹ Notwithstanding Tyonek's characterization of this language as indicating that discussions were "probable," the firm acknowledges that the Army did not, in fact, conduct discussions, and that our Office concluded (in response to the second protester's argument) that other communications with that firm were not discussions. Reconsideration Request at 11.

Tyonek complains that “neither the Agency nor the Intervenor ever raised the issue of Tyonek’s standing during the course of the protest.” Reconsideration Request at 2. However, as noted above, CICA specifically requires that a firm be an interested party for us to consider its protest. Hence, the question whether a firm is an interested party is an issue in every protest regardless of whether it is specifically raised by any party. Our Bid Protest Regulations provide for our dismissal of a protest or specific protest allegations at any time the record shows that such action is warranted. 4 C.F.R. § 21.5; Waterfront Techs., Inc.--Recon, supra at 2 n.2.

The request for reconsideration is denied.

Susan A. Poling
General Counsel