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Decision

Matter of: InSpace 21 LLC

File: B-410852; B-410852.3

Date: December 8, 2014

Marcia G. Madsen, Esq., David F. Dowd, Esq., Cameron S. Hamrick, Esq., and Michelle E. Litteken, Esq., Mayer Brown LLP, for the protester.
Mark D. Colley, Esq., Kara L. Daniels, Esq., Ronald A. Schechter, Esq., Lauren J. Schlanger, Esq., and Brandon M. Bodnar, Esq., Arnold & Porter LLP, for Range Generation Next LLC, the intervenor.
Christine Piper, Esq., and Major Michael G. King, Department of the Air Force, for the agency.
Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The protester is not an interested party to challenge the agency's evaluation of a joint venture's proposal where there is a dispute regarding the authority of the protester to file a protest on behalf of the joint venture.

DECISION

A protest filed on behalf of InSpace 21 LLC,¹ of Colorado Springs, Colorado, challenges the award of a contract to Range Generation Next LLC, of Sterling, Virginia, under request for proposals (RFP) No. FA88-11-13-R-0001, which was issued by the Department of the Air Force, for operations, maintenance, and sustainment services at two Air Force missile ranges. The protester challenges the agency's evaluation of the offerors' proposals, argues that the agency failed to

¹ The protest was filed with our Office by PAE Applied Technologies LLC's vice president of space system operations, who is also one of the board members of InSpace. Protest at 13; InSpace Operating Agreement at 44. As discussed below, PAE is one of two joint venture parties in InSpace. References herein to "the protester" are to InSpace as represented by the PAE vice president in his capacity as an InSpace board member.

conduct meaningful discussions, and contends that the best value tradeoff and source selection decision was unreasonable.

We dismiss the protest.

On March 20, 2013, the Air Force issued the RFP, which anticipated the award of a fixed-price, incentive-fee contract, with some cost-reimbursable contract line items.

As relevant here, InSpace is a joint venture, limited liability company, which was established between PAE Applied Technologies LLC and Honeywell Technology Solutions Inc., to compete for this Air Force requirement. InSpace Operating Agreement at 1. InSpace, as well as several other offerors, submitted proposals in response to the solicitation. After evaluating proposals, the agency awarded a contract to Range Generation.

On November 24, 2014, one of PAE's vice presidents filed this protest on behalf of InSpace. Protest at 1, 13. On November 25, Honeywell submitted a letter to our Office asserting that PAE does not have the authority to file a protest on behalf of the InSpace joint venture. Honeywell Letter (Nov. 25, 2014), at 2. Honeywell argues that the InSpace joint venture operating agreement "prevents a protest from being filed without the unanimous vote of the Management Board," and that "[u]nanimous consent is not present." Id. at 2. In support of its position, Honeywell provided minutes from a November 21 InSpace management board meeting, which reflect that the board did not unanimously vote to authorize the filing of the protest.² Board Meeting Minutes (Nov. 21, 2014), at 1. The minutes also show disagreement among the board members about the terms of the operating agreement, and, in particular, about whether unanimous or majority consent is required to authorize filing a bid protest. Id. Honeywell asserts that, based on the lack of a unanimous vote, the joint venture decided "in accordance with its Operating Agreement not to protest." Honeywell Letter (Nov. 25, 2014), at 2. Accordingly, Honeywell contends that the protester does not qualify as an interested party under our Bid Protest Regulations, and therefore, requests that our Office dismiss the protest.

The protester disagrees with Honeywell's interpretation of the joint venture's operating agreement, and asserts that the operating agreement requires only a majority vote, rather than a unanimous vote, of the joint venture's management board to pursue a protest. Protester Response (Dec. 1, 2014), at 1-2. As such, the protester contends that it was authorized to file the protest on behalf of the joint

² The management board consists of [DELETED] PAE representatives, and [DELETED] Honeywell representatives. Board Meeting Meetings (Nov. 21, 2014), at 1. The board meeting minutes indicate that the [DELETED] PAE members voted "yes" to authorize filing the protest, while the [DELETED] Honeywell members voted "no" to authorize filing the protest. Id.

venture. For the reasons discussed below, we conclude that the protester is not an interested party, and we dismiss the protest.

Under the Competition in Contracting Act of 1984 (CICA) and our Bid Protest Regulations, our Office only may decide a protest filed by an interested party, which the statute defines as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract. 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0 (2014). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 5.

The record reflects that the protester and Honeywell have conflicting interpretations of the terms of the joint venture's operating agreement, and as such, disagree regarding whether the protester is authorized to file this protest on behalf of the joint venture. Although the protester and Honeywell ask that our Office resolve this issue, the disagreement is a dispute between private parties, which as our case law explains, our office will not review.³ See, e.g., The GEO Group, Inc., B-405012, July 26, 2011, 2011 CPD ¶ 153 at 6.

Because our Office will not review the dispute between the protester and Honeywell regarding their interpretations of the operating agreement and the joint venture's internal process for authorizing the filing of a protest, we cannot conclude that this protest was filed by an interested party. As discussed above, the proposal was submitted by InSpace, a joint venture between PAE and Honeywell. As also discussed above, although the protester's position is that it has the required authority to file the instant protest, this fact is in dispute because the protester and Honeywell clearly disagree regarding the authority of the protester to file the protest on behalf of the joint venture. Specifically, this disagreement is acknowledged by the protester and Honeywell in the minutes of the November 21 board meeting, prior to the filing of the protest, see Board Meeting Meetings (Nov. 21, 2014), at 1, as well as in filings to our Office during this protest. Protester Response (Dec. 1, 2014), at 2; Honeywell Letter (Nov. 25, 2014), at 2.

Where, as here, a protester's interested party status is in question, the protester may not simply assert that it is an interested party. See Latvian Connection, LLC, B-410147, B-210149, Sept. 4, 2014, 2014 CPD ¶ 266 at 4. In the case of teaming arrangements, our Office has stated that, a joint venture, not any individual firm, is the appropriate interested party to protest the contracting agency's action. See, e.g., Advanced Commc'n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3

³ We note that the operating agreement contains a disputes provision, which provides a process for resolving disagreements. See Operating Agreement, Art. 18.

at 4 n.4. Our Bid Protest Regulations require a protester to affirmatively demonstrate that it is an interested party; a protester's failure to meet its obligation requires dismissal of the protest. 4 C.F.R. §§ 21.0(a)(1); 21.1(c)(5); 21.1(i); see Latvian Connection, LLC, supra at 5. Based on the record before us, and in light of the unresolved dispute, we find that the protester has not demonstrated that it has the authority to file this protest on behalf of the InSpace joint venture. Accordingly, in these circumstances, the protester does not qualify as an interested party for purposes of filing a protest with our Office.

The protest is dismissed.

Susan A. Poling
General Counsel