



Decision

Matter of: RJH Supply, LLC

File: B-420998

Date: September 14, 2022

Robert Hoffman for the protester.

Ann L. Giddings, Esq., and Kyle P. Symanowitz, Esq., Department of the Navy, for the agency.

Michael Willems, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester is not an interested party to file a protest on behalf of another party absent evidence that the other party has expressly authorized the protester to file and represent it in the bid protest.
 2. An authorized sales agent of a potentially interested party is not an interested party to pursue a protest on its own behalf where the agent is not itself a prospective bidder or offeror.
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DECISION

RJH Supply, LLC, a small business of Davidsonville, Maryland, protests the Department of the Navy, Naval Facilities Engineering Command's issuance of solicitation No. N40080-22-R-8078 for replacement of hospital wayfinding signage. The protester contends that, rather than issuing a competitive solicitation, the agency should have procured the requirement directly from Federal Prison Industries, Inc. (UNICOR), for whom RJH is an authorized sales agent.

We dismiss the protest on the basis that the protester is not an interested party.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, 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. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). In this case, RJH does not contend that it is an actual or prospective offeror under this solicitation, but instead

asserts that it is an interested party to protest because it is an authorized sales agent for UNICOR. Specifically, the protester argues that because it receives a sales commission on sales of signage of the type involved in this procurement it has a direct economic interest and is therefore an interested party to protest.

Although an agent may represent an interested party in a protest where it has been authorized to file protests on behalf of that party, the agent is not itself a prospective bidder or offeror and thus is not necessarily an interested party to protest on its own behalf. *E & R, Inc.*, B-255868, Mar. 29, 1994, 94-1 CPD ¶ 218; *Windet Hotel Corp.*, B-220987, Feb. 6, 1986, 86-1 CPD ¶ 138; *Priscidon Enters., Inc.*, B-220278, Nov. 13, 1985, 85-2 CPD ¶ 549. Moreover, we have specifically concluded that sales agents, participating dealers, or similar representatives are not interested parties to protest on their own behalf simply because they would receive some economic benefit (e.g., a contingent fee) in the event a contract were awarded to its principal. See, e.g., *FitNet Purchasing Alliance*, B-406075, Feb. 3, 2012, 2012, CPD ¶ 64; *Bulloch International*, B-265982, Dec. 26, 1995, 96-1 CPD ¶ 5.

In this case, we dismiss the protest because RJH has not established that UNICOR has authorized RJH to pursue bid protests on behalf of UNICOR, and RJH, which is not a prospective bidder or offeror, is not an interested party in its own right.

In this regard, RJH has offered a signed letter from UNICOR designating RJH as an “authorized sales representative” for signage and award products. Protest, attach. 1, Letter from UNICOR at 1. The letter goes on to note that as part of RJH’s role as a sales representative RJH is authorized to interact with “federal government agencies and other potential customers on behalf of UNICOR.” *Id.* That is to say, the letter authorizes RJH to interact with other federal agencies on behalf of UNICOR concerning sales of signage or award products. However, this authorization makes no reference to bid protests or other litigation, nor does it authorize RJH to act on UNICOR’s behalf in any matters other than sales.

In its request for dismissal, the Navy specifically argues that RJH is not an interested party because (1) nothing in the provided UNICOR authorization letter represented that RJH was authorized to file and pursue bid protests on UNICOR’s behalf, and (2) RJH, as a sales agent for UNICOR, had no independent standing to pursue a protest on its own behalf.¹ See Req. for Dismissal at 2-3. In its objection to the agency’s request for dismissal, RJH does not address the agency’s first argument with respect to whether UNICOR specifically authorized RJH to file this, or any other, protest on UNICOR’s behalf. See Resp. to Req. for Dismissal at 1. Accordingly, we cannot conclude that UNICOR has authorized RJH to represent it in this matter. Compare *E & R, Inc.*, *supra* (concluding that an agent may file a protest on behalf of another party where it is

¹ The agency also raises additional grounds for dismissal of the protest. Because we agree with the agency that the protester failed to demonstrate that it is an interested party to pursue the protest, we need not resolve the alternative asserted bases for dismissal.

specifically authorized to do so) *with Bulloch International, supra* (sales agent may not bring protest on behalf of another party where record does not suggest that the other party authorized the sales agent to represent it in bid protests).

Moreover, RJH is not an interested party to pursue this protest on its own behalf because its economic interest in the procurement is too remote. The protester argues that its economic interest is based on RJH's role as a "sales/marketing contractor for UNICOR." Resp. to Agency Req. for Dismissal at 1. In this regard, the protester argues that it "receives financial compensation as soon as UNICOR receives an award for a signage project where [RJH] found the opportunity." *Id.*; *see also id.* (arguing that RJH "has a tremendous direct economic impact given [its] commission rate"). RJH, therefore, concedes that it is not a prospective bidder or offeror, but rather its interest is based on its agency agreement with UNICOR. We have previously concluded that a potential sales commission is not the kind of direct economic interest contemplated by our Bid Protest Regulations. *See Bulloch International, supra* (concluding that the prospect of a sales commission is not sufficient to establish that protester is an interested party).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel