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Decision

Matter of: DGCI Corporation

File: B-422188.3; B-422188.4

Date: March 5, 2024

Lawrence J. Sklute, Esq., Sklute & Associates, for the protester.
Steven M. Sosko, Esq., Department of Defense, for the agency.
Michael P. Grogan, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not an interested party to challenge the agency's award decision, made on a lowest-priced technically acceptable basis, where the protester fails to demonstrate it would have a substantial chance at receiving award, even assuming it were to prevail on its challenge to the awardee's quotation, given the existence of at least one intervening technically acceptable, lower-priced quotation.

DECISION

DGCI Corporation (DGCI), a small business of McLean, Virginia, protests the award of a contract to Renos Company (Renos), of Erbil, Iraq, pursuant to request for quotations (RFQ) No. SPE605-23-Q-0365, issued by the Department of Defense, Defense Logistics Agency (DLA), for the acquisition of aviation turbine fuel. The protester contends the agency's evaluation of vendors' quotations was flawed.

We dismiss the protest.

BACKGROUND

The agency issued the solicitation on October 6, 2023, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 12.6 (Streamlined Procedures for the Evaluation and Solicitation for Commercial Products and Services). Agency Report (AR), Tab 2, RFQ at 1.¹ The RFQ contemplated the award of two, fixed-price contracts,

¹ All citations to the agency's report are to the corresponding Adobe PDF document page numbers.

both with a 2-month period of performance, for the delivery of aviation turbine fuel. *Id.* Specifically, DLA required jet propellant 8 (JP8) aviation fuel, at specified quantities, to be delivered to Bashur Air Base and Al Asad Air Base, both in Iraq. *Id.* at 2-3.

The solicitation provided both awards would be made to the single firm offering the lowest priced, technically acceptable quotation.² *Id.* at 1. The RFQ, while not identifying specific technical evaluation factors, required vendors to meet certain criteria. As relevant to this protest, the solicitation explained:

Offerors shall submit a copy of a Certificate of Analysis (COA) or Certificate of Quality (COQ) for the product offered from their supplier/refinery with their offer. The certificate of analysis shall have test results of a recent batch (within the past 3 months) of the required products. COAs and COQs not meeting the standard will be deemed technically unacceptable resulting in the quote not being considered for award.

Id. at 2 (emphasis removed). The RFQ further included the testing standards a vendor's offered fuel would have to meet. *Id.* at 3-4.

Following its evaluation, the agency initially made award to Amentum Services, Inc. (Amentum), on October 30, 2023. AR, Tabs 11 and 12, Amentum Contract Awards. Following DLA's discovery of timely submitted quotations that were not evaluated, the agency undertook another evaluation, ultimately awarding contracts to Renos on November 3. AR, Tabs 18 and 19, Renos Contract awards; see *also* Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 7. Relevant here, the total value of the Renos contract for delivery of fuel to Al Asad Air Base was approximately \$8,980,573. See AR, Tab 19, Renos Contract No. SPE605-24-P-517.

On November 10, DGCI filed a protest with our Office challenging DLA's awards to Renos.³ The protester argued DLA's award decision was flawed because the agency improperly determined Renos's quotation to be technically acceptable. On November 27, our Office dismissed DGCI's protest as academic based on the agency's proposed corrective action to reevaluate quotations and issue a new award decision. *DGCI Corporation*, B-422188.2, Nov. 27, 2023 (unpublished decision).

² The RFQ explained that the "successful offeror will be the overall lowest price technically acceptable offeror based on the total for both" RFQ contract line items--for services to Bashur Air Base and Al Asad Air Base, respectively. RFQ at 1.

³ The protester previously filed a separate protest challenging the agency's initial award to Amentum. On November 29, our Office dismissed DGCI's protest as academic because the contract awarded to Amentum was terminated on November 7. *DGCI Corporation*, B-422188, Nov. 29, 2023 (unpublished decision).

Following its implementation of corrective action, on November 29, DLA again made award to Renos. AR, Tab 33, Award Document at 1. DGCI filed the instant protest on December 8, challenging the agency's award decision with regard to fuel delivery to Al Asad Air Base.⁴

DISCUSSION

DGCI principally challenges DLA's determination that any of the other submitted quotations (other than its own) were technically acceptable. Specifically, the protester contends that while Renos's quotation, and the quotations submitted by two other vendors--[VENDOR A], and [VENDOR B]--were lower priced than DGCI's quotation, DLA should have evaluated all three as technically unacceptable, rendering them ineligible for award. In this regard, DGCI argues that Renos's offered fuel was not the type required under the terms of the solicitation. The protester also contends [VENDOR A], and [VENDOR B] submitted fraudulent certifications regarding their proffered fuel. Protest at 6-17; Comments and Supp. Protest at 2-28; Supp. Comments at 2-28.

We conclude that DGCI is not an interested party to challenge the agency's award decision.

DGCI's protest initially advanced the argument that Renos, [VENDOR A], and [VENDOR B] were technically unacceptable because these vendors could not have submitted COAs that conformed to the solicitation's requirements. Protest at 6-17. In this regard, the protester asserted that under the terms of the solicitation, the required product to be provided by the awardee was fuel from Iraq's Oil Products Distribution Company (OPDC), and that Iraqi law "requires that jet fuel used in Southern Iraq must be purchased from an OPDC refinery[.]"⁵ *Id.* at 10. Moreover, the protester contended that "when transporting/moving, purchasing[.], and contracting for jet fuel in Southern Iraq, vendors are required to purchase the jet fuel exclusively from OPDC and OPDC will not sell the jet fuel until the vendor is awarded a valid government contract." *Id.* at 9. As applied here, the protester argued because Renos, [VENDOR A], and [VENDOR B] "did not have a government contract for jet fuel in Southern Iraq at the time quotes were submitted (or ever), none of them is able to purchase jet fuel from an OPDC refinery[.]" *Id.* at 11. Consequently, DGCI argued these three vendors must have offered a product that was not OPDC jet fuel, and in turn, could not have

⁴ On December 6, DLA terminated, for the government's convenience, its contract with Renos for fuel delivery to Bashur Air Base. AR, Tab 36, Termination of Bashur Contract. Accordingly, this decision addresses only DLA's contract for fuel delivery to Al Asad Air Base.

⁵ The agency provides that "OPDC is one of thirteen Iraqi State-owned companies under the Iraq government's Ministry of Oil." COS/MOL at 2.

submitted COAs that met the RFQ's requirements (that is, as DGCI argues, COAs for OPDC jet fuel).

In response, among other arguments, DLA argued that its evaluation of Renos's, [VENDOR A's], and [VENDOR B's] quotations was reasonable, and nothing in the solicitation required a vendor's COA be from a particular source, to include OPDC. COS/MOL at 10-16. As relevant here, DLA also challenged DGCI's interested party status. *Id.* at 17. In this regard, the agency argued that both [VENDOR A's] and [VENDOR B's] quotations were rated as technically acceptable and were lower priced than DGCI's quotation. *Id.* Moreover, DLA noted that [VENDOR A's] and [VENDOR B's] submitted COAs explained their fuel samples originated from the bulk fuel installation at Al Asad Air Base. COS/MOL at 6, 17; see AR, Tab 4, [VENDOR B's] Quotation at 64 (indicating sample came from "BFI AAAB, Iraq"); Tab 6 at 4 (noting the same). Thus, according to the agency, "a COA sampled from [Al Asad Air Base] clearly indicates the offeror can deliver JP8 [fuel] to that location" and can fulfill the requirements of the contract. COS/MOL at 17. Moreover, DLA explained that "the COAs submitted by [VENDOR B] and [VENDOR A] provided more evidence that they were sourced from an OPDC allocation than DGCI's [COA]." *Id.*

In its comments on the agency's report, DGCI continued its argument that Renos was technically unacceptable because the firm could not provide OPDC fuel. Comments and Supp. Protest. at 14-19. DGCI, however, did not further allege that [VENDOR A's] or [VENDOR B's] quotations were technically unacceptable on the same basis. Rather, styled as a supplemental allegation, DGCI argues that these firms should have been found technically unacceptable because the COAs offered by [VENDOR A] and [VENDOR B] were allegedly fraudulent. *Id.* at 19-21. In this regard, DGCI claims that because the two COAs included nearly identical information for pertinent fields (*e.g.*, seal number, sample identification number, analysis date and time, *etc.*), the "evidence overwhelmingly demonstrates that [VENDOR B's] and [VENDOR A's] COAs are fraudulent." *Id.* at 21. Thus, the protester contends because [VENDOR A's] and [VENDOR B's] quotations did not include a valid COA as required by the solicitation evaluation criteria, they should have been deemed technically unacceptable. *Id.* As addressed above, however, the protester did not contend that [VENDOR A's] and [VENDOR B's] COAs--apparently sampled from an OPDC allocation at Al Asad Air Base--did not satisfy the RFQ's requirements concerning the required product.

In response to DGCI's supplemental allegation that [VENDOR A's] and [VENDOR B's] COAs were fraudulent, the contracting officer undertook an investigation to determine the validity of those COAs. AR, Tab 44, Declaration of Contracting Officer at 1. The contracting officer, identifying the similarities between the COAs, asked both firms to confirm the validity of the COAs and "whether they could provide an explanation for COAs listing different customers while having the same sample ID and order number." *Id.* at 2. [VENDOR B] explained that it had obtained its submitted COA from its subcontractor and noted that the validity of the COA could be determined by scanning the QR code on the COA. *Id.* [VENDOR B] also "provided an image of a screenshot showing the results of scanning the QR code, which included the COA report

number. . . and an indication from the laboratory, [DELETED], that it was valid.” *Id.*; see also AR, Tab 40, [VENDOR B] Email to DLA.

[VENDOR A] responded to the contracting officer, explaining that it, too, received its COA from its subcontractor, and had confirmed the validity of the COA with the laboratory, [DELETED]. AR, Tab 44, Declaration of Contracting Officer at 2. [VENDOR A] further explained that [DELETED] “admitted that a technical error had caused the COAs to have the same sample [identification] and order number[s].” *Id.* [VENDOR A] provided a letter from the laboratory that explained the COA was valid, but that it “appears that this same analysis report was sent out to another vendor as well in error[.]” AR, Tab 43, [VENDOR A] Letter at 2. Based on this information, the contracting officer found:

Since [DELETED] sent the letter to [VENDOR A] and did not indicate the COA sent to [VENDOR A’s] subcontractor was in error, it is reasonable to conclude that [VENDOR A’s] COA was valid and correctly evaluated as acceptable. The letter indicates that the COA sent to [VENDOR B’s] subcontractor may have been sent in error, but that it was not fraudulent. It is also possible, due to the connection between the companies, that the COAs should have listed different order numbers and report numbers, but that both COAs were taken from the same sample and otherwise valid.

AR, Tab 44, Declaration of Contracting Officer at 2-3. The contracting officer then concluded:

After reviewing the information available to me from an earlier procurement, the explanations provided by [VENDOR B] and [VENDOR A], and the letter provided by [DELETED], I conclude that the explanations provided are plausible. Therefore, I conclude that there is insufficient evidence to support the allegations that the COAs provided by [VENDOR B] and [VENDOR A] are fraudulent. I also conclude that based on the letter provided by [DELETED], at a minimum, [VENDOR A’s] COA was valid and [VENDOR A] was correctly evaluated as technically acceptable.

Id. at 3.

As an initial matter, we find no basis to object to the agency’s determination that, at a minimum, “[VENDOR A’s] COA was valid and [VENDOR A] was correctly evaluated as technically acceptable.” AR, Tab 44, Declaration of Contracting Officer at 3. The evaluation of vendors’ quotations is a matter within the agency’s discretion, and GAO will not perform its own evaluation, or substitute its judgment for that of the procuring agency; rather, GAO will examine the record to determine whether the agency’s judgments were reasonable and consistent with the solicitation’s stated evaluation criteria and applicable procurement statutes and regulations. See *Metropolitan*

Interpreters & Translators, Inc., B-415080.7, B-415080.8, May 14, 2019, 2019 CPD ¶ 181 at 6.

The record demonstrates the contracting officer sought out an explanation concerning the similarities between [VENDOR A's] and [VENDOR B's] COAs, and [VENDOR A] (a) confirmed its submitted COA was genuine, and (b) provided a letter from the testing laboratory that stated the "same analysis report was sent out to another vendor as well in error[.]" AR, Tab 43, [VENDOR A] Letter at 2; AR, Tab 42, [VENDOR A] Response at 1. On this basis, the contracting officer concluded that [VENDOR A's] explanation was plausible, [VENDOR A's] COA was valid, and [VENDOR A] was technically acceptable. AR, Tab 44, Declaration of Contracting Officer at 2-3.

DGCI disagrees with the contracting officer's conclusions, arguing that it was unreasonable for the contracting officer to rely on the letter [VENDOR A] provided from the testing laboratory. Supp. Comments at 15-21. For example, according to the protester, the letter is missing key details, as it does not identify the name of the other vendor that improperly received the same report. *Id.* at 18-20. However, the contracting officer considered the lack of detail in [DELETED]'s letter, regarding the identity of the firm that received the COA in error, and determined this information was not included "possibly to protect proprietary information of the other vendor [that received the report in error]." AR, Tab 44, Declaration of Contracting Officer at 2-3. On this record, we find no basis to conclude that the contracting officer's conclusions were unreasonable as to the validity of [VENDOR A's] COA. A protester's disagreement with the agency's judgments, without more, does not establish that an evaluation was unreasonable. *Metropolitan Interpreters & Translators, Inc.*, *supra* at 6.

Having found that DLA reasonably determined [VENDOR A's] quotation was technically acceptable, we conclude that DGCI is not an interested party to pursue its remaining allegation concerning whether DLA reasonably determined Renos's quotation was technically acceptable.

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. 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 the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *DNC Parks & Resorts at Yosemite, Inc.*, B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 12. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit of the relief sought. *Id.*

In a post-award context, we have generally found that a protester is an interested party to challenge an agency's evaluation of proposals only where there is a reasonable possibility that the protester would be next in line for award if its protest were sustained. *CACI, Inc.-Fed.*, B-419499, Mar. 16, 2021, 2021 CPD ¶ 125 at 5; *OnSite Sterilization*,

LLC, B-405395, Oct. 25, 2011, 2011 CPD ¶ 228 at 4. In this regard, we have explained that where there are intervening offerors or vendors who would be in line for the award even if the protester's challenge was sustained, the intervening offeror or vendor has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify as an interested party. *HCR Constr., Inc.; Southern Aire Contracting, Inc.*, B-418070.4, B-418070.5, May 8, 2020, 2020 CPD ¶ 166 at 6-7 n.6; see also *HVF West, LLC v. United States*, 846 F. App'x 896 (Fed. Cir. 2021) (to demonstrate a substantial chance of winning the award, the protester had to sufficiently challenge the eligibility of not only the awardee, but also the intervening offerors).

As noted above, DGCI's initial protest argued that Renos, [VENDOR A], and [VENDOR B] must have offered a product that was not OPDC jet fuel, and in turn, could not have submitted COAs that met the RFQ's requirements. See Protest at 11. However, neither in its comments on the agency report, nor its supplemental comments, does DGCI present an argument challenging whether [VENDOR A's] or [VENDOR B's] quotations were technically unacceptable, except to argue their COAs were fraudulent. Instead, DGCI argued that Renos (not [VENDOR A] or [VENDOR B]) was not technically acceptable because it could not supply the product required under this solicitation. Thus, to the extent DGCI's initial protest argued that [VENDOR A] and [VENDOR B] could not be technically acceptable because they could not have submitted COAs for OPDC jet fuel, such an argument was abandoned.⁶ See 4 C.F.R. § 21.3(i)(3); *KSJ & Assocs., Inc.*, B-409728, July 28, 2014, 2014 CPD ¶ 222 at 5 (allegation is dismissed as abandoned where protester provides no substantive response in its comments on the agency report in connection with its initial protest challenge).

Accordingly, having found reasonable the agency's conclusion that [VENDOR A's] quotation was technically acceptable (in that its COA was not fraudulent), and where the record demonstrates [VENDOR A's] quotation was lower priced than DGCI's,⁷ on these unique facts, we conclude that DGCI is not an interested party to pursue its sole remaining protest allegation that Renos's quotation is technically unacceptable.⁸ *HVF*

⁶ The protester argues it did not abandon its argument, citing to its comments on the agency report at pages 18-20. Supp. Comments at 15, n.23. However, this citation to DGCI's comments concerns whether [VENDOR A] and [VENDOR B] are technically unacceptable because their COAs are fraudulent, not whether these vendors could supply DLA's required fuel product.

⁷ [VENDOR A's] quotation was priced at \$12,196,689, while DGCI's quotation was priced at \$13,868,903. AR, Tab 33, Award Decision at 4.

⁸ DGCI also argues it is "entitled to its costs incurred in filing and pursuing its protest docketed under B-422188.2 and the instant protest given that DLA-Energy unduly delayed taking proper corrective action in the face of DGCI's clearly meritorious protest." Protest at 17. However, the record demonstrates the agency undertook a

(continued...)

West, LLC v. United States, supra at 899 (protester failed to establish that it was an interested party to challenge the agency's award decision where the protester failed to mount any credible challenges to the technical acceptability of the better price-ranked offerors).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

(...continued)

reevaluation of quotations and issued a new award promptly after our Office dismissed DGCI's protest (B-422188.2); these actions were consistent with DLA's stated corrective action. COS/MOL at 8; AR, Tab 32, Memorandum Regarding Corrective Action at 1. On this record, we find no basis to conclude DLA unduly delayed taking corrective action on DGCI's prior protest.