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Decision

Matter of: FCN Inc.

File: B-424695

Date: August 21, 2026

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Eugene Y. Kim, Esq., Max D. Houtz, Esq., Darren S. Gilkes, Esq., and Jeffrey S. Meding, Esq., Department of Defense, for the agency.
Michelle Litteken, Esq., and April Y. Shields, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester challenging the firm's exclusion from consideration for award of a subcontract does not qualify as an interested party where the protester does not have a direct economic interest in the award of a contract in a federal procurement.
 2. GAO will not consider a protest involving the award of a subcontract where the prime contractor retained responsibility for handling substantially all of the substantive aspects of the procurement.
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DECISION

FCN Inc., a woman-owned small business of Rockville, Maryland, protests the exclusion of FCN from consideration for award of a subcontract by Invictus Consulting, LLC, of Alexandria, Virginia. Invictus holds an indefinite-delivery, indefinite-quantity contract known as the Solutions for the Information Technology Enterprise III (SITE III) contract, awarded by the Department of Defense, Defense Intelligence Agency (DIA). Invictus solicited quotations from subcontractors to support a task order competed under the SITE III contract, and the protester contends that the agency unreasonably determined that FCN has an organizational conflict of interest (OCI) and "directed that FCN could not participate" in that procurement. Protest at 1.

We dismiss the protest.

BACKGROUND

The relevant facts are not in dispute. On May 22, 2026, the agency issued a request for quotations (RFQ) to SITE III contract holders, including Invictus. Protest at 4; Req. for Dismissal at 3. Invictus then issued an RFQ to FCN to provide various hardware items, support, and licenses. Protest at 5; Protest, exh. 4, RFQ Email; Req. for Dismissal at 3. The parties refer to the RFQ issued by Invictus to FCN as the “Venice RFQ.” Protest at 4; Req. for Dismissal at 1. Thereafter, FCN submitted a quotation to Invictus, which Invictus evaluated. Req. for Dismissal, Tab 14, FCN Quotation; Req. for Dismissal, Tab 16, Invictus Technical Evaluation; Req. for Dismissal, Tab 17, Invictus Price Evaluation.

Concurrently, the agency was considering whether FCN had an OCI,¹ and on July 17, after reviewing the record regarding the potential OCI, the contracting officer requested that Invictus remove FCN from the Venice RFQ, as well as from two other procurement actions under the SITE III contract. Req. for Dismissal at 3; Req. for Dismissal, Tab 30, Potential OCI Notification. On July 20, Invictus emailed FCN and stated: “[t]he Government customer instructed Invictus to remove FCN from the above referenced RFQs. In accordance with our customer’s instruction, we have removed FCN from the above referenced procurements.” Protest, exh. 1, Invictus Email to FCN, July 20, 2026.

FCN filed this protest on July 30, challenging its exclusion from the Venice RFQ.

DISCUSSION

FCN protests its exclusion from the Venice RFQ, asserting that “this protest challenges a *federal government procurement action*--the Agency’s determination and directive communicated by Invictus to FCN on July 20, 2026, that FCN be excluded from the Venice RFQ.”² Protest at 2. On August 7, prior to the due date for the agency report, DIA requested dismissal, arguing: (1) this is a subcontract protest barred by 4 C.F.R. § 21.5(h); (2) FCN is not an interested party; (3) the protest challenges matters of contract administration; and (4) FCN’s allegations are factually and legally insufficient. Req. for Dismissal at 2.

¹ The documents submitted by the parties indicate that the investigation of the potential OCI began in June. Protest, exh. 5, Invictus Email to FCN, June 5, 2026; Protest at 5; Req. for Dismissal at 3.

² Subsequently, on August 8, FCN filed a complaint with the U.S. Court of Federal Claims, challenging the agency’s refusal to impose a stay of performance under the Competition in Contracting Act of 1984 (CICA), and seeking a temporary restraining order and preliminary injunction. See Notice of Filing of Related Judicial Proceeding. On August 11, the court issued a decision concluding “that FCN lacks standing as a subcontractor . . . to enforce a CICA stay” and denying the plaintiff’s motions. *FCN Inc. v. United States*, No. 26-cv-01144 (Fed. Cl. Aug. 11, 2026).

As an initial matter, we agree with DIA that FCN is not an interested party to challenge DIA's actions. Req. for Dismissal at 9-10. Under the bid protest provisions of CICA, 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. CICA defines an interested party as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. § 3551(2)(A); see also 4 C.F.R. § 21.0(a)(1). Under these rules, a prospective subcontractor does not qualify as an interested party. See *Team Wendy, LLC*, B-417700.2, Oct. 16, 2019, at 7. Here, while the protester contends that its "direct economic interest was unarguably affected by DIA's determination it could not receive an award," the fact remains that FCN was competing for a *subcontract*. Resp. to Req. for Dismissal at 10. FCN does not hold a SITE III contract and has not demonstrated that it has a direct economic interest in the award of a contract (here, the issuance of a task order) in a federal procurement. As such, FCN does not qualify as an interested party to maintain this protest.

In addition, the action here does not fall within the exception where we will take jurisdiction over a subcontract award if the subcontract is awarded "by" the government. Under CICA, our Office has jurisdiction to resolve bid protests concerning solicitations and contract awards that are issued "by a Federal agency." 31 U.S.C. § 3551(1)(A). Under this authority we have taken jurisdiction over a subcontract award where we find that a subcontract essentially has been awarded "by" the government. *The Panther Brands, LLC*, B-409073, Jan. 17, 2014, at 4-6. In this regard, we have considered a subcontract procurement to be "by" the government where the agency handled substantially all of the substantive aspects of the procurement and, in effect, took over the procurement, leaving to the prime contractor only the procedural aspects of the procurement, *i.e.*, issuing the subcontract solicitation and receiving proposals. *Id.* For example, in *The Panther Brands*, our Office concluded it had jurisdiction to review a subcontract award where the solicitation issued to prospective subcontractors advised that the government would make the selection decision, the agency evaluated the proposals of prospective subcontractors, and the agency selected the successful proposal without receiving an award recommendation from the prime contractor. *Id.* at 6. On the other hand, we have found subcontractor procurements were not "by" the government where the prime contractor handled meaningful aspects of the procurement, such as preparing the subcontract solicitation and evaluation criteria, evaluating the offers, negotiating with the offerors, and selecting the awardee. See *Baron Servs., Inc.*, B-402109, Dec. 24, 2009, at 3.

As noted above, DIA contends that GAO lacks jurisdiction over this protest because FCN is challenging an Invictus subcontract procurement, and not a DIA procurement. Req. for Dismissal at 4-9. In advancing this argument, the agency notes that Invictus issued the Venice RFQ, FCN submitted its quotation to Invictus, Invictus evaluated FCN's quotation, and Invictus was responsible for the resulting award decision. *Id.* at 6-7. The agency acknowledges that it directed Invictus to remove FCN from the procurement, but DIA states that "Government direction affecting the subcontract outcome, standing alone," is insufficient to implicate GAO's jurisdiction. *Id.* at 5-6 (citing *Raytheon Co.*, B-415722 *et al.*, Dec. 28, 2017, at 3-7; *Kerr-McGee Chemical Corp.*--

Recon., B-252979.2, Aug. 25, 1993, at 1, 3-4). In response, FCN contends that our Office has jurisdiction over this protest because DIA directed the exclusion of FCN, and that action constitutes a federal procurement action. Resp. to Req. for Dismissal at 6-9.

We agree with the agency and find there was no procurement “by” the government here with respect to the Venice RFQ. Although we recognize that the agency’s OCI determination resulted in the exclusion of FCN’s quotation, we conclude that Invictus is not acting as a conduit for the agency. As noted above, Invictus handled meaningful aspects of the procurement, such as preparing the Venice RFQ and evaluation criteria, evaluating quotations, and selecting the supplier. DIA’s OCI determination did not transform Invictus’s procurement into a federal procurement. See *Kerr-McGee, supra* at 6 (stating that even if the agency “effectively directed the subcontract awards,” the prime contractor was not a conduit for the agency because the prime contractor retained substantial responsibility for the conduct of the subcontract procurement). In sum, FCN has not demonstrated that DIA handled substantially all of the substantive aspects of the procurement. Accordingly, this protest is outside our Office’s jurisdiction.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel