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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Aria Target Logistics Services

File: B-408308.14; B-409055.2

Date: February 27, 2014

Keith L. Baker, Esq., Barton, Baker, Thomas & Tolle, LLP, for the protester.
Paul W. Bowen, Esq., Robert J. Sherry, Esq., and Kirstin D. Dietel, Esq., K&L Gates LLP, for Local National Contractor (Ref. No. 99), an intervenor.
Christopher S. Cole, Esq., Department of the Air Force, for the agency.
Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Government Accountability Office, under its bid protest function, does not review protests that an agency unreasonably failed to consider whether compelling reason exists to award a contract despite offeror's inclusion on list of contractors proposed for debarment; the contracting agency is the appropriate forum for suspension and debarment disputes.

DECISION

Aria Target Logistics Services (ATL) protests the Department of the Air Force's exclusion of its proposals from the competitive range under request for proposals (RFP) Nos. HTC711-13-R-R002 (RFP R002) and HTC711-13-R-R007 (RFP R007), for regional trucking services in Afghanistan.

We dismiss the protests.

The solicitations at issue sought proposals for indefinite-delivery/indefinite-quantity contracts to furnish trucking services. RFP R002 contemplated award of approximately 12 contracts for each of three suites: bulk fuel, dry cargo, and heavy cargo. RFP R007 contemplated award of contracts for trucking services in three regions: south, north, and west. Although ATL's proposals were evaluated as acceptable for all three suites under RFP R002 and for the west region under RFP R007, ATL's proposals were eliminated from the competitive range in both procurements. The basis for the eliminations was the same--ATL's name had been placed on the exclusion list in the System for Award Management (SAM) because

the Air Force has proposed that the firm be debarred from federal government contracting, rendering the firm ineligible to receive contracts. After receiving notice of its eliminations and debriefings, ATL filed these protests.

Federal Acquisition Regulation (FAR) § 9.405 provides in pertinent part:

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action

FAR § 9.405(a).

ATL asserts that the fact that its proposals were acceptable warranted their inclusion in the competitive range for both procurements. In this regard, ATL acknowledges that it has been proposed for debarment, but disputes the bases for proposing to debar the firm and placing its name on the exclusion list in the SAM. ATL further argues that the agency either failed to make a determination whether there was a compelling reason to award it contracts, despite its proposed debarment, or unreasonably determined that a compelling reason did not exist. Protest of R002 at 4; Protest of R007 at 3-4.

As an initial matter, our Office does not review protests that an agency improperly suspended or debarred a contractor from receiving government contracts. Bid Protest Regulations, 4 C.F.R. § 21.5(i) (2013). Because the FAR sets forth specific procedures for both imposing and challenging a suspension or debarment action, see FAR §§ 9.406-3(b), 9.407-3(b), the appropriate forum for resolving such disputes (including, as ATL claims here, procedural deficiencies) is with the contracting agency. 4 C.F.R. § 21.5(i); Logan, LLC, B-294974.6, Dec. 1, 2006, 2006 CPD ¶ 188 at 7; Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5.

Further, as to ATL's challenge of the reasonableness of the agency's failure to find a compelling reason to consider ATL's proposals for award, nothing in FAR § 9.405 requires that, prior to a contracting officer's rejection of an excluded offeror's proposal, the agency head must first consider whether a compelling reason exists not to exclude the contractor's offer. Instead, the FAR simply allows an agency head to reach such a conclusion. Since there is no requirement to consider whether a compelling reason exists, ATL fails to state a valid basis for protest.

The protests are dismissed.

Susan A. Poling
General Counsel