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The decision issued on the date below was subject to a GAO Protective Order. The decision has now been authorized for release in its entirety.

Decision

Matter of: Afghan Premier Logistics

File: B-409971

Date: September 26, 2014

Michael A. Gordon, Esq., Fran Baskin, Esq., and Jason T. Edwards, Esq., Michael A. Gordon PLLC; Richard L. Moorhouse, Esq., and L. James D'Agostino, Esq., Greenberg Traurig LLP, for the protester. Lt. Col. Mark E. Allen and Capt. Eric J. Singley, Department of the Air Force and J. Toby Harryman, Esq., U.S. Transportation Command, for the agency. Glenn G. Wolcott, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that the agency unreasonably rejected its proposal to perform trucking services throughout Afghanistan is denied where the record shows that protester's proposal was assigned a high risk force protection rating, based on classified information that could not be disclosed to the protester but was reviewed by our Office, and provides a reasonable basis for the agency's decision to reject the proposal.

DECISION

Afghan Premier Logistics (APL), of Kabul, Afghanistan, protests the U.S. Transportation Command's (USTRANSCOM)¹ rejection of APL's proposal to provide trucking services in Afghanistan pursuant to request for proposals (RFP) No. HTC711-14-R-W002. ATL asserts that it is entitled to a contract award because it submitted a technically acceptable proposal that offered a lower price than that of some of the awardees.

We deny the protest.

¹ USTRANSCOM is one of nine unified commands within the U.S. Department of Defense (DOD). The mission of USTRANSCOM is to provide air, land, and sea transportation for the DOD, both in peace and wartime.

BACKGROUND

The agency issued the solicitation in May 2014, seeking proposals to provide secure and reliable means of transporting various cargoes throughout Afghanistan.² The solicitation was divided into three “suites,” reflecting three different types of cargo--bulk fuel, dry cargo, and heavy cargo--and provided that, under each suite, the agency would award multiple contracts to the responsible offerors submitting the lowest-priced, technically acceptable proposals. Agency Report (AR), exh. 7, RFP, at 45-47.

The solicitation provided that to be responsive, “all non-U.S. Contractors (including joint venture with non-U.S. Contractors) must be registered in the Joint Contingency Contracting System (JCCS).”³ RFP at 49. Consistent with this requirement, the U.S. Central Command (CENTCOM) has instituted a vendor vetting program for contractors seeking to do business with the U.S. Government in Afghanistan.⁴ The purpose of this program is to “help identify and prevent insurgents, terrorists, militias, foreign intelligence and security services (FISS) and criminals from gaining access to U.S. and Coalition equipment, facilities, and personnel and using contracting proceeds to fund their operations.” AR, exh. 12, Determination of Contractor Responsibility, at 4. Pursuant to the vetting program, vendors are assigned one of four force protection risk ratings: A, B, C, or D. AR, exh. 5, CENTCOM Memorandum, Mar. 27, 2014, at 2. Contractors that are rated C or D are barred from all coalition bases in Afghanistan, unless an exception is granted. AR, exh. 12, Determination of Contractor Responsibility, at 4. Contracting officers are required to review a contractor’s force protection risk rating prior to making any contract award. AR, exh. 5, CENTCOM Memorandum, Mar. 27, 2014, at 4.

Following publication of the solicitation, APL submitted its proposal. Thereafter, the agency evaluated proposals and determined that APL was in line for award. The contracting officer then considered APL’s status under the vendor vetting program

² The solicitation contemplated the award of bridge contracts to cover the performance gap created by the expiration of the first National Afghanistan Trucking contract (NAT I) and the suspension of awards under the second National Afghanistan Trucking contract (NAT II) caused by pending protests.

³ The JCCS is a real-time contract data repository and reporting tool for contracts in Iraq and Afghanistan, and is available to all DOD contracting commands. www.jccs.gov/olvr; see also U.S. *Efforts to Vet Non-U.S. Vendors Need Improvement*, GAO-11-355 (June 2011).

⁴ CENTCOM is one of the Department of Defense’s (DOD) six combatant commands. CENTCOM’s area of responsibility includes Afghanistan, and it is responsible for issuing policy guidance regulating activities within its jurisdiction. See Agency’s Legal Memorandum/Contracting Officer’s Statement at 3.

and determined that APL had been assigned a rating of C, that is, a “High Risk” rating. AR, exh. 12, Determination of Contractor Responsibility, at 4. Thereafter, the contracting officer reviewed classified information supporting the risk rating, was advised that no exception for APL would be granted, and determined that APL was not a responsible contractor. Id. Accordingly, APL was notified that it would not receive a contract award, and was further advised that: “APL is not responsible to perform on this contract due to matters of National Security.” AR, exh. 16, APL Debriefing, at 1. Because the risk rating and responsibility determination were based on classified information, the supporting information was not provided to APL. This protest followed.

DISCUSSION

APL protests that it should have been awarded a contract, and complains that neither it nor its representatives have been provided with the basis for the agency’s non-responsibility determination.

As the United States Court of Federal Claims has stated, although the vendor vetting rating process does not provide a contractor with prior notice of its ineligible status or an opportunity to present rebuttal evidence, requiring traditional due process in the rating process would adversely affect national security. NCL Logistics Co. v. United States, 109 Fed. Cl. 596, 620 (2013). The court elaborated that the requirements of due process vary given the circumstances and, in the environment of a warzone, when the required notice would necessarily disclose classified material and could compromise national security, normal due process requirements must give way to national security concerns. Id. We agree.

Here, in considering APL’s protest, and the agency response thereto, our Office reviewed classified information supporting the agency’s risk assessment and non-responsibility determination. Based on our review, we think the agency’s decision to reject this proposal was reasonable.

The protest is denied.

Susan A. Poling
General Counsel