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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Latvian Connection, LLC

File: B-410147; B-410149

Date: September 4, 2014

Keven Barnes, Latvian Connection, LLC, for the protester.
Debra J. Talley, Esq., Department of the Army, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protests are dismissed where protester fails to establish that it is an interested party under Government Accountability Office Bid Protest Regulations.

DECISION

Latvian Connection, LLC, of Healdsburg, California, and Kuwait City, Kuwait,¹ protests the terms of solicitation Nos. W91RUS14T0243 and W91RUS14T0286, issued by the Department of the Army to procure battery-related maintenance services, and office furniture, respectively, for Fort Huachuca, Arizona. Latvian Connection argues that it has been improperly excluded from competing for these procurements, which are being conducted on behalf of the Army by FedBid, Inc.

We dismiss the protests because Latvian Connection has not established that it is an interested party.

BACKGROUND

The Army issued the solicitations on July 14 and July 23, 2014, respectively, through the FedBid website pursuant to Federal Acquisition Regulation (FAR)

¹ Latvian Connection's protest lists its corporate address as Healdsburg, California, but the firm appears to do business out of Kuwait City, Kuwait. System for Award Management (SAM), DUNS 534749622 (listing physical address for Latvian Connection, LLC, in Kuwait City).

Subpart 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Items. FedBid is a commercial online procurement services provider that runs a website at FedBid.com which, among other things, hosts reverse auctions.² The solicitations contemplated such auctions here.

Latvian Connection's protests object to the conduct of these procurements through FedBid. The protester argues that FedBid has suspended it from using its service and, thus, effectively has debarred the firm from bidding on federal procurements conducted through FedBid.

Latvian Connection has filed a number of protests in our Office that raise this same challenge. During the course of one of these protests, our Office was provided an advertisement stating that a concern known as Blue Camel Consulting could file bid protests with our Office. See <http://www.scribd.com/doc/170659692/BLUE-CAMEL-CONSULTING-GAO-PRE-AWARD-and-POST-AWARD-PROTESTS>. Although the advertising concern is listed as Blue Camel Consulting, it appears to identify Latvian Connection, LLC, as the actual entity available to provide the advertised services. In this connection, the advertisement reads "Latvian Connection LLC has been uncovering corruption" at various contracting activities. The advertisement further states: "If your company has been prejudiced or cheated by one of these contracting offices and wants to file a GAO Level Pre-Award or Post Award Protest, or need help with extracting a written debriefing, then contact me." Id.

The advertisement also states: "GAO Protests--followed to the end \$5,000 and 20% discount if it is against any DoD Agency without exception to location of the contracting officer that has prejudiced your business." Id. Finally, the advertisement states: "Latvian Connection LLC has filed GAO protests for Afghanistan, Kuwait, and other Middle East Country companies Completely Confidential." Id. The point of contact for the advertisement is "Keven.Barnes@LatvianConnectionLLC.com," the same individual that represents himself as the chief executive officer of Latvian Connection, LLC, the protester here.

The advertisement, coupled with the fact that the face of the instant protests did not reflect Latvian Connection's capability to meet the solicited requirements, called into question Latvian Connection's status as an interested party to maintain these protests. Our Office was concerned that Latvian Connection might be acting confidentially on behalf of a third-party company, as represented in the advertisement. As a result, we explained our concerns to the protester and asked it to advise our Office whether it was an interested party to pursue the protests.

² FedBid uses specific terminology to describe its reverse auctions. A procurement conducted on behalf of a federal agency using the service is referred to as a "buy," and a participant in the reverse auction is said to submit a "bid." See [FitNet Purchasing Alliance](#), B-310031, Sept. 21, 2007, 2007 CPD ¶ 181 at 2 n.1.

Specifically, our Office asked the protester to address three questions in relation to these protests:

- (1) whether the protest was filed at the request of or on behalf of any party other than Latvian Connection LLC,
- (2) whether Latvian Connection LLC intends to submit a quotation on its own behalf in the event the protest is sustained, and
- (3) how Latvian Connection LLC is capable of performing the requirements of the challenged solicitation.

GAO E-Mail to Latvian Connection in B-410149, Aug. 19, 2014; GAO E-Mail to Latvian Connection in B-410147, Aug. 20, 2014.

In response to our inquiries, Latvian Connection stated that it did not “write [the protest] for any other company,” and that it was an interested bidder. Latvian Connection E-Mail to GAO in B-410149, Aug. 19, 2014; see also Latvian Connection E-Mail to GAO in B-410147, Aug. 20, 2014 (wherein the firm stated that it “wrote the protest for Latvian Connection,” and intended to bid on it if it is issued through a website other than FedBid).

With respect to both protests, Latvian Connection also asserted that if the Army had concerns regarding its responsibility, the matter must be referred to the Small Business Administration (SBA) for resolution through its Certificate of Competency (COC) process. Id. The protester also included as an e-mail attachment, with no explanation of its relevance, a memorandum of understanding between Latvian Connection LLC and a Kuwaiti firm “so that Latvian Connection LLC will be recognized as a teaming partner and subcontractor for U.S. Government projects” should the Kuwaiti firm be awarded federal contracts. Memorandum of Understanding at 2.

Latvian Connection provided no substantive information concerning its actual capabilities to perform either of the contracts at issue here. Rather, the protester’s response to our specific inquiries was confined to the unsubstantiated representation that it intended to bid on the protested acquisitions.

DISCUSSION

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective 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), 21.1(a) (2014); Cattlemen’s Meat Co., B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1.

Our Regulations require that a protest set forth all information establishing that the protester is an interested party for the purposes of filing a protest. 4 C.F.R. § 21.1(c)(5). 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.³ Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 5.

Where, as here, a protester's interested party status is in question, the protester may not simply assert that it is an interested party. Instead, the protester generally must show that it intends to compete under the solicitation and, where appropriate, that it has the necessary capacity and experience to compete; that it has competed in the past on similar projects; or that it has performed similar projects in the past. Total Procurement Servs., Inc., B-272343.2 et al., Aug. 29, 1996, 96-2 ¶ CPD 92 at 4; see also PPG Indus., Inc., B-272126, June 24, 1996, 96-1 CPD ¶ 285 at 3; Bulloch Int'l, B-265982, Dec. 26, 1995, 96-1 CPD ¶ 5 at 2.

Latvian Connection's responses to our questions do not establish its status as an interested party to pursue these protests. Rather, Latvian Connection states, without elaboration, only that it is an interested party and did not write the protests for any other party. The firm also provided, with no explanation, a copy of a memorandum of understanding between the protester and a Kuwaiti firm that appears to anticipate the award of federal contracts to the Kuwaiti firm, not the protester. Despite our specific request for information establishing its capability, nothing submitted by the protester demonstrates, or even asserts, that Latvian Connection has the capability to satisfy the requirements of the protested solicitations--to provide furniture, or to replace and dispose of batteries at Fort Huachuca--even if it were to submit responses to the solicitations. Under such circumstances, we find that Latvian Connection has not established that it is a prospective bidder or offeror with a sufficiently direct economic interest in these solicitations to be considered an interested party.

Latvian Connection's response to our inquiry also argues that any concerns about its ability to perform the agency's requirements are not for resolution by GAO; rather, they must be resolved by SBA under its COC procedures. Those procedures, however, are separate and distinct from a decision by our Office regarding a protester's interested party status.

³ Although an agent may represent an interested party in a protest, see E&R, Inc., B-255868, Mar. 29, 1994, 94-1 CPD ¶ 218 at 2, the agent is not itself a prospective bidder or offeror, and thus is not considered an interested party to protest on its own behalf. Priscidon Enters., Inc., B-220278, Nov. 13, 1985, 85-2 CPD ¶ 549 at 1-2.

As a general matter, a contracting officer must make an affirmative determination of an offeror's responsibility before making an award to that offeror. FAR § 9.103(b). Such a determination involves a consideration of many factors, such as whether a contractor has adequate financial resources, the ability to comply with performance requirements, a satisfactory record of performance, integrity and business ethics, and the necessary organization, experience, skills, and equipment. FAR § 9.104-1. Where a contracting officer finds a small business concern nonresponsible, the contracting officer is required to refer the matter to the SBA for consideration under the COC procedures. FAR § 19.601(c). These requirements, by their terms, are applicable only to contracting officers conducting Government acquisitions: "A contracting officer shall, upon determining an apparent successful small business offeror to be nonresponsible, refer that small business to the SBA for a possible COC" FAR § 19.601(c).

Our Bid Protest Regulations, on the other hand, require a protester to affirmatively demonstrate that it is an interested party; a protester's failure to meet its obligation requires dismissal of the protest. 4 C.F.R. §§ 21.0(a)(1); 21.1(c)(5); 21.1(i). Such an inquiry 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. Sales Res. Consultants, Inc., supra. As also explained above, generally, a protester must show that it intends to compete under the solicitation and, where appropriate, that it has the necessary capacity and experience to compete; that it has competed in the past on similar projects; or that it has performed similar projects in the past. Total Procurement Servs., Inc., supra.

Some elements of a contracting officer's pre-award responsibility determination may overlap with the factors our Office may deem necessary to evaluate a protester's interested party status, such as whether a firm has indicated its capability to compete for a contract. However, our analysis is fundamentally more limited than a responsibility determination under FAR Part 9, and is performed solely to determine whether a protester has represented that it has the requisite interest to avail itself of our forum to challenge an alleged impropriety in connection with the issuance of a solicitation or the award of a contract. Unlike a contractor responsibility determination, our consideration of a protester's interested party status does not bear on the viability of a firm to receive an award. Accordingly, our limited interested party review does not provide for consideration by the SBA under its COC process, nor does the COC process anticipate such a review.

The protests are dismissed.

Susan A. Poling
General Counsel