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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-410981

**Date:** April 6, 2015

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Keven Barnes, Latvian Connection, LLC, for the protester.  
Paul Batlan, Esq., Department of the Interior, for the agency.  
Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Protest is sustained where FedBid, acting as the agent for the contracting agency, excluded the protester, a small business, from the competition based on a perceived lack of business integrity, in effect making a negative responsibility determination, without referring the matter to the Small Business Administration under the Certificate of Competency procedures.

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### DECISION

Latvian Connection, LLC, of Kuwait City, Kuwait, protests its exclusion from competition under request for quotations (RFQ) No. 691713, issued by the Department of the Interior, U.S. Geological Survey, for fabrication and installation of mechanical assist mobile shelving system components. Latvian Connection argues that it has been improperly excluded from competing for this procurement, which is being conducted on behalf of the agency by FedBid, Inc.

We sustain the protest.

### BACKGROUND

The solicitation, issued on December 11, 2014, and set aside for small businesses, sought a contractor to provide fabrication and installation of a high-density mobile shelving system to replace the current steel cantilever shelving at the U.S. Geological Survey's library in Denver, Colorado. Agency Report (AR), Tab 5, RFQ, at 1; see Contracting Officer's Statement (COS) at 1. The estimated value of the procurement was \$95,159. COS at 1. The procurement was conducted through

FedBid, a commercial online procurement services provider that operates a website at [www.FedBid.com](http://www.FedBid.com) which, among other things, hosts reverse auctions.

The procurement here was being conducted using FedBid's reverse auction platform. In order to respond to solicitations posted on FedBid, prospective vendors or offerors must have a valid FedBid account. FedBid's terms of use provide that "FedBid may refuse the Services to any person or any entity at any time, in FedBid's sole discretion." <http://www.fedbid.com/terms>; see also AR at 5 (quoting AR, Tab 3, FedBid Suspension and Reinstatement Policy, at 1).

FedBid suspended the protester's account on July 8, 2014. FedBid Suspension E-mail, July 8, 2014, at 1. In this regard, FedBid provided the protester with the following explanation of the decision to suspend it:

System and Business Integrity: Latvian Connection has taken actions to repeatedly and purposely interfere with FedBid's business relationships.

Right to Terminate: Latvian Connection's use of the FedBid marketplace demonstrates that Latvian Connection has not used (and does not use) the FedBid marketplace as required in the FedBid Terms of Use.

Protest, Attach. 9, FedBid Suspension E-mail, July 8, 2014, at 1.

Since Latvian Connection's FedBid account was suspended, the firm was unable to compete for the procurement. Latvian Connection filed this bid protest prior to the January 2, 2015 closing date, challenging its inability to compete for this requirement.

## DISCUSSION

Latvian Connection argues that its exclusion from the competition constitutes either a negative responsibility determination, which should have been referred to the Small Business Administration (SBA), or an improper de facto debarment.

### Interested Party Status

As a preliminary matter, DOI contends that Latvian Connection is not an interested party to protest this procurement because Latvian Connection is currently

suspended by FedBid and has received no awards in procurements conducted using FedBid since its registration with FedBid.<sup>1</sup>

Under our Bid Protest Regulations, we will only consider protests filed by an “interested party,” that is, 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. 4 C.F.R. §21.0(a). 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. Advanced Concept Enterprises, Inc., B-410069.3, B-410069.4 Jan. 22, 2015, 2015 CPD ¶ 53 at 2.

Here, we find that Latvian Connection has sufficiently established its status as an interested party. First, Latvian Connection’s suspension from FedBid cannot provide the basis for concluding that it is not an interested party, since the agency’s use of FedBid to conduct this procurement is the very action that Latvian Connection is challenging. Thus, if the protest were sustained, Latvian Connection could be a potential vendor for this contract. In addition, the protester indicates that if it is permitted to submit a response to the solicitation, it plans to team with two specific small businesses and with a service-disabled veteran-owned small business construction company to fulfill the solicitation’s requirements. Protest at 3. In these circumstances, we find that, for this procurement, Latvian Connection has sufficiently established its status as an interested party.

#### Responsibility Determination

Latvian Connection argues that its exclusion from the competition here constituted a negative responsibility determination with respect to a small business, which therefore should have been referred to the SBA under its Certificate of Competency (COC) procedures. Protest at 14. In a recent decision, our Office sustained Latvian Connection’s protest against FedBid’s exclusion of the protester from the competition under a Department of State procurement. In that case, in response to our request for its comments, SBA stated that the actions of FedBid, acting as the agent for the contracting activity, in excluding a potential vendor based on a perceived lack of business integrity, constituted a de facto nonresponsibility determination, which should have been referred to the SBA under its COC

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<sup>1</sup> The agency further suggests that Latvian Connection is not an interested party here because it did not pursue the matter of its FedBid suspension with either the agency or FedBid. However, Latvian Connection timely raised its concerns regarding the FedBid suspension when it filed this protest on December 30, 2014, prior to the January 2, 2015 due date for receipt of quotations, thereby affording the agency (and FedBid) the opportunity to take timely corrective action as contemplated by our Bid Protest Regulations. See 4 C.F.R § 21.2(a)(1).

procedures. Latvian Connection, LLC, B-410947, March 31, 2015, 2015 CPD ¶ \_\_ (citing SBA Comments, Feb. 26, 2015, at 2-5).

As we noted in our prior decision, under the Small Business Act, agencies may not find a small business nonresponsible without referring the matter to the SBA, which has the ultimate authority to determine the responsibility of small businesses under its COC procedures. 15 U.S.C. § 637(b)(7); FAR subpart 19.6; Latvian Connection, LLC, supra; FitNet Purchasing Alliance, B-410263, Nov, 26, 2014, 2014 CPD ¶ 344 at 6-7. In this regard, the Small Business Act provides that it is the SBA's duty:

To certify to Government procurement officers . . . with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract.

15 U.S.C. § 637(b)(7)(A) (emphasis added). Importantly, this section of the Act also provides that a "Government procurement officer . . . may not, for any reason specified in the preceding sentence preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration." Id.

Here, Latvian Connection was suspended from use of FedBid. Under FedBid's rules, therefore, Latvian Connection was ineligible to respond to DOI's solicitation, and thereby precluded from competing or being awarded a contract. The basis of Latvian's suspension was the firm's lack of "System and Business Integrity." FedBid Suspension E-mail, July 8, 2014, at 1. Although FedBid, a private company, was the entity that precluded Latvian's ability to compete for the contract, we have previously held that when FedBid hosts a reverse auction on its website, it acts as an agent for the agency conducting the procurement. AeroSage LLC, B-409627, July 2, 2014, 2014 CPD ¶ 192 at 4. As a result, we conclude that the DOI, through its agent, FedBid, precluded Latvian Connection, a small business, from competing for, and potentially being awarded, a contract on the basis of the firm's integrity, without referring the matter to the SBA. This amounted to a determination of nonresponsibility, which the agency should have referred to the SBA for a COC determination. Latvian Connection, LLC, supra. Therefore, we sustain the protest on this basis.

#### De Facto Debarment

Latvian Connection also contends that its suspension constitutes a de facto debarment. Protest at 4. However, our Office no longer reviews protests that an agency improperly suspended or debarred a contractor from receiving government contracts. Latvian Connection, LLC, supra, at 5; Logan, LLC, B-294974.6, Dec. 1, 2006, 2006 CPD ¶ 188 at 7; 4 C.F.R. § 21.5(i). We have instead determined that

suspension and debarment matters are properly for review by the contracting agency in accordance with the applicable provisions of the FAR. Logan, LLC, supra; Triton Elec. Enters., Inc., B-294221 et al., July 9, 2004, 2004 CPD ¶ 139 at 2; Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5. Therefore, we have no jurisdiction to address Latvian's allegation that its suspension constitutes a de facto debarment.

## RECOMMENDATION

We recommend that the agency revise the ground rules of the procurement to conduct the competition in a manner consistent with the Small Business Act and other procurement laws and regulations. We also recommend that DOI reimburse the protester the costs of filing and pursuing its protest. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling  
General Counsel