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Decision

Matter of: National Air Cargo Group, Inc.

File: B-411830.2

Date: March 9, 2016

Milton C. Johns, Esq., Thomas M. Craig, Esq., Fluet Huber & Hoang, PLLC, for the protester.

David S. Cohen, Esq., Daniel Strouse, Esq., John J. O'Brien, Esq., Laurel A. Hockey, Esq., and Amy J. Spencer, Esq., Cohen Mohr LLP, for United Airlines, Inc., the intervenor.

Lt. Col. Aaron G. Lake, Department of the Air Force, for the agency.

Young S. Lee, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision to award an additional contract under a solicitation contemplating multiple awards is dismissed where the protester is an awardee and has not credibly alleged that it is an interested party.

DECISION

National Air Cargo Group, Inc., (National), of Orlando, Florida, protests the award of a contract to United Airlines, Inc., (United), issued by the Department of Defense (DoD), United States Transportation Command (TRANSCOM) under request for proposals (RFP) No. HTC711-15-R-R001 for international commercial transportation services. The protester argues that the agency's decision to award a contract to United violates the terms of the RFP and that the agency's evaluation of United's past performance was unreasonable.

We dismiss the protest.

The agency issued the RFP on February 12, 2015, seeking proposals for a full range of international commercial transportation services to move cargo on behalf of DoD and the U.S. government. RFP at 1; RFP, attach. 1, Performance Work Statement (PWS), at 2. The RFP anticipated the award of approximately four indefinite-delivery, indefinite-quantity (IDIQ) contracts based on a performance-price trade-off, under the commercial item and negotiated contracting procedures of

Federal Acquisition Regulation (FAR) Parts 12 and 15.¹ RFP amend. 2 at 6. The solicitation contemplated that the IDIQ contracts would have a one-year base period with two one-year options, and provided that each contract awardee was guaranteed a minimum quantity of orders valued at no less than \$2,500. RFP at 3-4. The RFP also included procedures established by the agency to determine how future task orders would be awarded. RFP at 87; RFP, attach. 3, Fair Opportunity Process, at 1-4.

In addition to the initial awards that were anticipated, the solicitation provided for the possibility that the agency could expand the existing pool of IDIQ contract holders. RFP at 52. In this regard, the RFP stated that TRANSCOM could reopen the solicitation if there was a shortfall in meeting the requirements among existing IDIQ contract holders, or if it was in the agency's best interest to add new contractors to the original IDIQ contract pool. Id. Any new awardee would then be eligible to compete for future task orders under the RFP's fair opportunity ordering procedures.² Id. Existing IDIQ contract awardees would not be eligible for an additional contract. Id.

The agency received multiple proposals by the March 16 closing date, including those from National and United. Dismissal Request at 2. TRANSCOM made five contract awards on June 11, with National being among the awardees selected. Id. The agency awarded a sixth IDIQ contract to United on July 17.³ Id. On July 27, National filed a protest challenging TRANSCOM's award to United, arguing that the terms of the RFP prevented the agency from making a sixth award and alleging that the agency's evaluation of United's proposal was unreasonable.⁴ Protest

¹ The solicitation's evaluation scheme provided that offerors would be evaluated under the following four factors: business proposal, technical, past performance and price. RFP amend. 2 at 6-8. Proposals would first be evaluated for acceptability under the business proposal and technical evaluation factors. Id. at 6. Technically acceptable proposals would then be evaluated under the past performance and price factors to determine which offerors represented the best value. Id. Past performance was considered to be approximately equal to price. Id.

² The solicitation established that the ordering period for any new contractor added to the awardee pool would coincide with, and could not exceed, the ordering period established for initial pool of IDIQ contract awardees. RFP at 52.

³ The solicitation required that all offerors hold their pricing firm for 180 days after the due date for receipt of proposals. RFP amend. 2 at 5. The agency's sixth award to United was made within this 180-day period.

⁴ National did not challenge the fifth IDIQ contract award. Protest (B-411830.1) at 1-7.

(B-411830.1) at 1-7. On September 24 our Office dismissed National's protest because it did not establish a valid basis for challenging the agency's action.⁵ National Air Cargo Group, Inc., B-411830, Sept. 24, 2015 (unpublished decision) at 1-3.

Subsequently National filed a protest at the U.S. Court of Federal Claims on October 13. Dismissal Request at 2. In response to that protest, TRANSCOM advised that it would take corrective action by re-evaluating the past performance of all offerors and by issuing a new award decision based on its re-evaluation. Id. at 3; Protest, Exhibit 5, Corrective Action Notice, at 1. National's protest was dismissed by the Court on November 30. Dismissal Request at 3. On January 21, 2016, TRANSCOM affirmed all six contract awards, including the awards made to National and United. Id. The instant protest was filed with our Office on January 27.

The substance of National's instant protest generally repeats the challenges it raised in its prior protest to our Office. The protester again argues that award of a sixth contract to United is improper because the RFP terms anticipated approximately four contracts. National also asserts that because United's initial contract was not awarded until July 17, 2015, which was after the initial five awards were made on June 11, the award to United is improper because TRANSCOM failed to follow the RFP's reopening procedures. Finally, the protester argues that the agency's evaluation of United's past performance was unreasonable because National alleges that United has no prior relevant experience with the transportation requirement being acquired under the solicitation.

The agency argues that National's protest should be dismissed because it is not an interested party to pursue the protest. National contends that it is an interested party to bring its protest. In this regard, National alleges that its direct economic interest will be adversely affected by the award of United's contract because the addition of a sixth awardee will "reduce the total volume of work solicited under task orders available for National." Protest at 2. We agree with the agency for the reasons explained below.

⁵ The protest was dismissed on the basis that our Office would not consider the merits of National's allegations, which in essence sought to limit the agency's discretion to increase the pool of competition among the IDIQ contract holders. National Air Cargo Group, Inc., B-411830, Sept. 24, 2015 (unpublished decision) at 2. We generally will not review a protest that has the purpose or effect of reducing competition to the benefit of the protester and do not consider such an argument as stating a valid basis for protest. Id. (citing Morpho Detection, Inc., B-410876, Mar. 3, 2015, 2015 CPD ¶ 85 n. 4).

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 bidder or 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). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party’s status in relation to the procurement. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id.

Under the RFP’s terms, IDIQ contract holders are guaranteed a minimum quantity of orders valued at no less than \$2,500 and a fair opportunity to compete for future task orders issued by TRANSCOM.⁶ RFP at 3-4, 87; RFP, attach. No. 3, Fair Opportunity Process, at 1. National’s protest did not explain why it believes that the addition of United’s contract will result in National receiving a volume of orders valued less than its minimum guarantee or why a sixth award will prevent National from competing for future task orders.⁷ In this regard, the protester has not credibly alleged that its contract would be reduced, increased, or otherwise affected by the agency’s decision to award a sixth contract. Furthermore, National has already received an award here, and the RFP terms expressly prohibit existing IDIQ contract holders from being eligible for additional awards. RFP at 52. Under circumstances such as these, and where the solicitation contemplates multiple awards, an existing contract awardee is not an interested party to challenge the agency’s decision to award another contract.⁸ See Recon Optical, Inc.; Lockheed-

⁶ The ordering procedures provide all multiple-award IDIQ contract holders with a fair opportunity to be considered for every order in excess of \$3,000, unless the contracting officer determines that one of four limited exceptions applies. RFP, attach. No. 3, Fair Opportunity Process, at 1.

⁷ While the addition of a sixth awardee has the potential to increase competition among IDIQ contract holders for future task orders, it is unclear how the addition of another awardee will reduce the total volume of orders issued by the agency. Furthermore, the addition of a sixth contract awardee does not guarantee increased competition for each task order because the solicitation encourages, but does not require, IDIQ contract holders to compete for future orders. RFP, attach. No. 3, Fair Opportunity Process, at 4.

⁸ While our Office is not bound by decisions of the Court of Federal Claims, we note that the court has reached a similar conclusion. See Automation Technologies, Inc. v. United States, 73 Fed. Cl. 617 (2006) (an awardee under a multiple-award contract lacks standing to protest an award to another offeror where it has not established that it has a direct economic interest to challenge the additional award).

Martin Corp., Fairchild Sys., B-272239, B-272239.2, July 17, 1996, 96-2 CPD ¶ 21 at 3-4 (to constitute a cognizable protest when a solicitation contemplates multiple awards, an existing contract holder must credibly allege direct economic harm in order to challenge the award of another contract).

The protest is dismissed.

Susan A. Poling
General Counsel