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Decision

Matter of: Intermarkets Global USA, LLC

File: B-415969.2; B-415969.4

Date: March 9, 2018

John G. Horan, Esq., and Thomas F. Rath, Esq., Dentons US LLP, for the protester. John E. McCarthy Jr., Esq., David C. Hammond, Esq., Mark A. Ries, Esq., James G. Peyster, Esq., Robert J. Sneckenberg, Esq., Charles Baek, Esq., and Sharmistha Das, Esq., Crowell & Moring LLP, for KGL Food Service WLL, the intervenor. R. Zen Schaper, Esq., and Cathleen Choromanski, Esq., Defense Logistics Agency, for the agency. Peter D. Verchinski, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Company is not an interested party to protest the award of a contract where the proposal was submitted by a separate company.

DECISION

Intermarkets Global USA, LLC, (IMG US) of Boulder, Colorado, protests the Defense Logistics Agency's (DLA) award of a contract to KGL Food Services WLL, under request for proposals (RFP) No. SPE300-15-R-0042, for food distribution in the Middle East. IMG US primarily challenges the agency's evaluation of KGL's proposal.

We dismiss the protest.

On December 18, 2015, DLA issued the RFP for a full line food distributor responsible for the supply and delivery of semi-perishable and perishable food items in Kuwait, Iraq, Syria, and Jordan. Several offerors, including Intermarkets Alliance, submitted proposals by the RFP's February 8, 2016 closing date.

During the procurement, DLA asked Intermarkets Alliance to explain certain inconsistencies in the firm's proposal with regard to the identity of the offeror. Intermarkets Alliance explained that the proposal was offered by a joint venture of two companies: Intermarkets Alliance (IMG) and USFI, Inc. Agency Request for Dismissal, exh. 7, at 10. Intermarkets Alliance stated that the first company was referred to as

“Intermarkets Alliance,” or “IMG Alliance,” or “IMG,” in its proposal, and the firm is a Jordanian Company registered in Jordan with a physical address in Amman, Jordan. Id. The company had the Data Universal Number System (DUNS) number 557664366, and the NATO Commercial and Government Entity (NCAGE) number SAMK7. Id. The proposal explained that the “IMG Alliance Group” includes a number of other sister and subsidiary companies, including

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Id. at 11. The proposal further explained that “[e]ach of these companies may have a role in this solicitation and any resultant contracts – but all roles are executed under the umbrella of IMG Alliance or in the name of IMG Alliance.”¹ Id. Finally, the proposal explained that two individuals, Mr. S and Mr. A, “sign for all these companies.” Id. Specifically, Mr. S “signs for all these companies as Chairman and Chief Executive Officer,” and Mr. A “signs for all these companies as Senior Vice President, Project and Business Development with or without adding the name of the company.” Id.

After learning of award to KGL, IMG US filed these protests.²

The agency requests summary dismissal on the basis that the protest was filed by IMG US, but that a different entity, Intermarkets Alliance, submitted the proposal in the procurement at issue here. The agency argues that because IMG US was not an actual offeror in connection with the procurement, IMG US does not qualify as an interested party under our Bid Protest Regulations, and, therefore, the protest should be dismissed. We agree.

Under the Competition in Contracting Act of 1984 (CICA) and our Bid Protest Regulations, our Office only may decide a protest filed by an “interested party,” which the statute defines as an “actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract.” 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0. 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. Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 5.

As discussed above, the proposal at issue here was submitted by a joint venture

¹ IMG US was not listed as one of the sister or subsidiary companies that may have a role in contract performance.

² IMG US filed an initial protest on January 29, 2018, and then filed a supplemental protest on February 5.

consisting of Intermarkets Alliance and USFI, Inc.³ As also discussed above, this protest was filed by IMG US, not Intermarkets Alliance. Unlike Intermarkets Alliance, IMG US is a firm incorporated in the state of Delaware with DUNS number 080653092, CAGE number 7V1U7, and located in Boulder, Colorado. Agency Request for Dismissal, exh. 15, System for Award Management (SAM), at 1-6. Given that these are different companies, IMG US is not an “actual or prospective bidder or offeror” and therefore does not qualify as an interested party under CICA and our Bid Protest Regulations.

IMG US argues that it is an interested party because the proposal indicated that Intermarkets Alliance was “submitting the proposal on behalf of, and with authority from, all IMG companies.” Protester’s Response to Agency Request for Dismissal, at 2. IMG US explains that, after submitting the proposal, the owners of the IMG companies relocated to the United States in October, 2016, and created IMG US in November, 2016, as part of the IMG Companies. *Id.* at 2-3; exh. B, Decl. of Mr. A, at 2. The protester maintains that “the offeror submitting the proposal--the IMG companies--remains identical,” and the “only change is that the protesting entity--IMG US--is the current representative of the IMG companies in the place of [Intermarket Alliance].” *Id.* at 6.

It is true that the proposal indicated that employees and resources of several companies comprising the “IMG Alliance Group” would be used to perform the contract. However, regardless of the affiliation of the individuals--or the owner of the resources--that would be used perform the contract, IMG US has not demonstrated that the entity with which the government would contract would be IMG US, and not Intermarkets Alliance. To the contrary, Intermarkets Alliance continued to represent, through its debriefing in January 2018, that it was the firm with which the agency would be contracting. *See* Agency Request for Dismissal, exh. 10, Agency Debriefing to Intermarkets Alliance; exh. 11, Emails from Mr. A at IMG Alliance. In this regard, even after the creation of IMG US in November, 2016, there is nothing in the record to indicate any change in the identity of the proposed offeror, or any change in the proposed IMG Alliance Group of entities that would be performing the contract, or any change at all in Intermarket Alliance’s proposal. While IMG US asserts that from the time IMG US was established, IMG US “was intended to operate as the primary IMG entity that would enter into contracts with the United States Government, and coordinate the IMG group of companies in delivering the . . . requirements,” IMG US provides nothing to demonstrate that the offeror here changed from Intermarkets Alliance to IMG US, for example, by showing that IMG US is a successor in interest to Intermarkets Alliance. Protester’s Response to Agency Request for Dismissal, at 5.

³ Given that our dismissal here finds that IMG US is not the same entity as Intermarkets Alliance, such that IMG US is not an interested party to file a protest, we need not consider whether Intermarkets Alliance alone would be an interested party to file a protest on behalf of the joint venture.

In sum, there is nothing in the record to indicate that the DLA would be in privity of contract with IMG US, and not Intermarkets Alliance. Accordingly, notwithstanding the protester's contention that the same group of entities would be performing the contract after the addition of IMG US to the IMG group of entities, the record shows that Intermarkets Alliance, and not IMG US, was the actual offeror, and IMG US therefore does not qualify as an interested party for purposes of filing a protest with our Office. See 4 C.F.R. § 21.0; Integral Sys., Inc., B-405303, Aug. 16, 2011, 2011 CPD ¶ 161 at 3-4.

IMG US also asserts that, in accordance with Intermarket Alliance's proposal, Mr. S and Mr. A have authority to act on behalf of the joint venture, and they "now hold the authority through IMG US" to file a protest. Protester's Response to Agency Request for Dismissal, at 8. While Mr. S. and Mr. A may have the authority to act on behalf of both the offeror and IMG US, this does not change the fact that the protest was filed by IMG US, and not Intermarkets Alliance, the offeror under this solicitation.

The protest is dismissed.

Thomas H. Armstrong
General Counsel