



## Decision

**Matter of:** DGCI Corporation

**File:** B-418494

**Date:** April 27, 2020

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Ayman Bekdash, for the protester.  
Christopher J. Robbins, Esq., Department of the Navy, for the agency.  
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GAO, participated in the preparation of the decision.

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### DIGEST

Protester is not an interested party to challenge the terms of the solicitation when, even if the protest is sustained, the protester would be ineligible for award under the remaining terms of the solicitation.

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### DECISION

DGCI Corporation, of McLean, Virginia, protests the terms of request for proposals (RFP) No. N62470-20-R-4001, issued by the Department of the Navy, for design-build construction services at Naval Air Station Sigonella in Sicily, Italy. The protester argues that the solicitation unduly restricts competition by requiring prime contractors to have a specialized certification to perform the work, and that the agency's basis for evaluation is flawed.

We dismiss the protest because the protester is not an interested party.

On January 16, 2020, the Navy issued the solicitation under the two-phase design-build provisions of Federal Acquisition Regulation subpart 36.3, for construction services at the fleet maintenance facility on Naval Air Station Sigonella in Sicily, Italy. Agency Report (AR), Tab 5, RFP at 4. The RFP contemplates the award of a fixed-price contract to the offeror whose proposal conforms to the solicitation and represents the best value to the government, considering technical and price evaluation factors, using a tradeoff selection process. *Id.*

Under phase one of the competition, the agency will evaluate offerors on three factors: technical approach; corporate experience; and past performance. *Id.* at 11. The agency will then select the most highly qualified offerors to submit phase two proposals.

*Id.* at 4. In phase two, the agency will evaluate proposals against three factors: safety; technical solution; and price. *Id.* at 11-12. After completing the phase two evaluations, the solicitation advised that the agency would make its best-value award decision based on its consideration of an offeror's corporate experience, past performance, technical solution, and price.<sup>1</sup> *Id.* at 12. The corporate experience and technical solution factors are of equal importance, and when combined, are of equal importance to the past performance factor; the combined non-price factors are approximately equal to price. *Id.*

The subject of DGCI's challenge is the solicitation's inclusion of a Societa' Organismi d'Attestazione (SOA) certification requirement for prime contractors. *Id.* at 7-8. An SOA certification evidences compliance with Italian law regarding the qualifications of companies competing for public works contracts, and demonstrates the existence of the technical and financial capacity required for the award of public works contracts in Italy. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 16-19. Offerors are required to demonstrate compliance with the SOA certification in their phase two proposals. RFP at 7.

In addition, the solicitation requires offerors to meet other specialized criteria due to "the unique nature of this project, which includes construction of secure areas requiring specific personnel and contractor clearance levels and construction on military installations in Italy imposing specific host nation requirements." COS/MOL at 5. For example, the RFP is limited to United States prime companies consisting of United States citizens with at least a final security clearance adjudicated at a level of "secret." RFP at 7. In addition, and relevant to our decision here, in order to receive the technical specifications and drawings necessary to complete phase two proposals, the solicitation requires offerors to have both a Department of Defense facility security clearance, and the capability to safeguard documents classified for purposes of national security as secret. *Id.* at 5-6. By the phase one proposal due date, offerors are required to submit to the agency information, among other things, confirming the address of their cleared facility and a list of cleared contractor personnel proposed to work on the contract. *Id.* at 6.

On February 19, one day prior to the due date for the submission of phase one proposals and the information confirming an offeror's document safeguarding capability, DGCI timely filed the instant protest.

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<sup>1</sup> The technical approach and safety factors will be evaluated on an acceptable/unacceptable basis. The solicitation advises that offerors rated as unacceptable under technical approach will be found ineligible to proceed to phase two, whereas offerors rated as unacceptable under the safety factor will be ineligible for award, unless the deficiencies underlying the unacceptable rating are remedied through discussions. RFP at 6.

The protester challenges the solicitation's requirement that prime contractors must have the requisite SOA certification to be eligible to compete for award.<sup>2</sup> Protest at 1. DGCI argues that the agency lacks a reasonable basis for requiring prime contractors to have the SOA certification because the certification is only required for Italian construction companies, not United States firms operating under a U.S. government contract. *Id.* at 8. In support of its position, the protester alleges that this is the first time an agency has required an SOA certification for United States companies at the prime level; agencies have typically accepted SOA certificates from subcontractors and/or teaming partners. *Id.* DGCI also argues that the solicitation failed to provide sufficient information regarding the relative importance of evaluation subfactors under the corporate experience factor. *Id.* at 8.

In addition to addressing the merits of the protest, the Navy argues that DGCI is not an interested party to challenge the terms of the solicitation.<sup>3</sup> COS/MOL at 25-26. While DGCI challenged the solicitation's requirement that prime contractors hold an SOA certification, the Navy notes that the protester has not challenged any other affirmative requirement placed on offerors, to include the requirement that an offeror possess the capability to safeguard documents marked as secret. *Id.*; see RFP at 6-7. The agency further argues that the record demonstrates that DGCI does not have the requisite safeguarding capability, which was required to have been submitted on February 20. COS/MOL at 26; see Response to Req. for Dismissal at 5. Thus, the Navy argues that even if our Office sustains this protest and requires the Navy to revise and/or amend the SOA certification requirement, and revise the corporate experience evaluation criteria, DGCI would still be unable to compete for award because it does not have the required document safeguarding capability. COS/MOL at 26.

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<sup>2</sup> We did not issue a protective order in this matter because DGCI elected to proceed with its protest without counsel. The agency provided an unredacted version of the agency report to our Office and a redacted version of the report to the protester. Our discussion here is necessarily general to avoid reference to proprietary or source selection sensitive information. *Spacesaver Storage Sys., Inc.*, B-298881, Dec. 11, 2006, 2006 CPD ¶ 196 at 2 n.2.

<sup>3</sup> The Navy, prior to the submission of its agency report, asked our Office to dismiss the protest on the basis, in part, that DGCI was not an interested party. Req. for Dismissal, Feb. 24, 2020. The agency argued that the protester did not provide information that demonstrated it was capable of meeting the solicitation's minimum requirements, apart from the SOA certification requirement. *Id.* at 3. Our Office denied the agency's request, noting that the agency's request for dismissal did not include information to suggest that DGCI could not affirmatively meet the solicitation's minimum requirements, other than the SOA certification. GAO's Response to Agency's Req. for Dismissal, Feb. 25, 2020, at 1-2. However, we also provided that the "agency may, through its report, challenge whether DGCI is, in fact, an interested party if it can provide information that demonstrates that the protester cannot otherwise meet the minimum requirements of the solicitation." *Id.* at 2.

In response, DGCI concedes that it does not currently have the capability to safeguard documents marked as secret. Comments at 7. However, the protester argues that because the document safeguarding capability is required only to access the classified specifications and drawings necessary to prepare a proposal for phase two of the competition, “[b]ut for [the protester’s] exclusion from the procurement by the unduly restrictive SOA requirement, DGCI would have obtained the [General Services Administration]-approved security container or vault required for SECRET storage capability so that DGCI could have competed in Phase II.” *Id.* Accordingly, DGCI argues that it is an interested party to challenge the terms of the solicitation.

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. 4 C.F.R. § 21.0(a). 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. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. *Courtney Contracting Corp.*, B-242945, June 24, 1991, 91-1 CPD ¶ 593 at 4. A protester is not an interested party where it would not be eligible to receive a contract award were its protest to be sustained. *International Training, Inc.*, B-272699, Oct. 2, 1996, 96-2 CPD ¶ 132 at 2. A protester is not an interested party to challenge the terms of a solicitation, even if the protest is sustained, if it is clear that the protester will be ineligible for award under the remaining terms of the solicitation. *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 3.

Here, we conclude that DGCI has failed to establish that it is an interested party to pursue this protest. DGCI has not challenged the solicitation’s requirement that an offeror must possess the capability to safeguard documents marked as secret, and concedes that it does not have such capability. See Comments at 7. The record also demonstrates that DGCI failed to submit the required documentation establishing its capability to safeguard documents marked as secret by the February 20 date established by the RFP for submission of this documentation. Thus, DGCI is not eligible to compete for award under the terms of this RFP, even if the agency amended the solicitation in a manner that addressed the protester’s allegations concerning SOA certification and the corporate experience evaluation criteria. Accordingly, because DGCI could not be eligible for contract award even if its protest were sustained, and has not otherwise protested the terms of the RFP which make it ineligible for award, DGCI is not an interested party for the purposes of this protest. *RELM Wireless Corp.*, *supra*, at 4; see *Air Transport Ass’n*, B-278621, Feb. 19, 1998, 98-1 CPD ¶ 56 at 3; *National Customer Eng’g*, B-251166, Feb. 9, 1993, 93-1 CPD ¶ 118 at 4.

In reaching this conclusion, we are unpersuaded by the arguments marshaled by DGCI concerning its interested party status. First, the protester seemingly argues that because the RFP’s document safeguarding requirement would only become operative

during phase two of the competition, DGCI was not required to obtain document safeguarding capability until that time. Comments at 7. The solicitation, however, required offerors to submit this information to the agency by February 20, and DGCI failed to do so. RFP at 6-7. As the protester does not challenge the requirement for offerors to submit their document safeguarding capabilities prior to phase two of the competition, we fail to see how the RFP's clear instruction would excuse DGCI's non-compliance with the requirement, or would otherwise render DGCI eligible for award.

Second, DGCI contends that it is an interested party because, but for the SOA requirement in the solicitation, DGCI would have procured the capability to safeguard documents marked as secret. Comments at 7. However, the protester does not advance any argument as to why the solicitation's SOA requirement precluded DGCI from otherwise meeting the safeguarding requirements in the RFP, or how the SOA requirement is somehow connected to the protester's ability to secure document safeguarding capabilities. In the absence of any explanation by the protester, we cannot conclude that DGCI's challenge to one solicitation requirement--the SOA certification--excuses its non-compliance with another solicitation requirement--capability to safeguard documents marked as secret.

Because DGCI failed to meet the solicitation's requirement for establishing its capability to safeguard documents marked as secret by the date established in the solicitation, DGCI is not eligible to be awarded the contract, even if its protest were to be sustained. Accordingly, DGCI is not an interested party to pursue its challenge to the SOA certification or evaluation criteria.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel