

Decision

Matter of: Qwest Government Services, Inc. d/b/a CenturyLink QGS

File: B-420095

Date: October 6, 2021

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Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging actions by AgFirst-Farm Credit Bank is dismissed because the procuring entity is not a federal agency as defined by the Federal Property and Administrative Services Act of 1949 and therefore the challenged actions are not matters within GAO's bid protest jurisdiction.

DECISION

Qwest Government Services, Inc. d/b/a CenturyLink QGS (CenturyLink) protests the issuance of a task order to Granite Telecommunications, LLC under an unnumbered solicitation issued by AgFirst-Farm Credit Bank. The solicitation seeks network/data services and software defined wide area network (SD-WAN) services and contemplates issuance of a task order under the General Services Administration's (GSA) Enterprise Infrastructure Solutions indefinite-delivery, indefinite-quantity contract.¹ CenturyLink contends that AgFirst unreasonably evaluated proposals under the technical and price factors, impermissibly permitted individual credit unions to influence the award decision, conducted inadequate and unequal discussions, and failed to evaluate proposals for compliance with the Federal Information Security Management Act.

We dismiss the protest.

AgFirst issued the instant solicitation on January 13, 2021, seeking a contractor to transform AgFirst's network architecture into a provider-managed SD-WAN and to

¹ AgFirst is named as an "other eligible user" of GSA sources of supplies and services in Appendix B of GSA circular OGP 4800.21, dated July 19, 2016.

support the operation of the SD-WAN environment. Task Order Solicitation at 13. AgFirst is a borrower-owned financial institution that provides credit to farmers, ranchers, residents of rural communities, agricultural and rural utility cooperatives, and other eligible borrowers. Farm Credit Administration (FCA) Letter, Sept. 16, 2021, at 1. The protester submitted a proposal on February 5. On August 2, AgFirst notified the protester of the award to Granite. This protest followed.²

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act (CICA), 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Pacific Photocopy & Research Servs.*, B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. As relevant here, CICA defines a protest to be a written objection by an interested party to a solicitation or other request by a federal agency for bids or proposals for a contract for the procurement of property or services, or an award or proposed award of such a contract. 31 U.S.C. §§ 3551(1), 3553. Our threshold jurisdictional concern is whether the procurement at issue is being conducted by a federal agency. *Americable Int'l, Inc.*, B-251614, B-251615, Apr. 20, 1993, 93-1 CPD ¶ 336 at 2.

CICA adopted the definition of a federal agency set forth in section 3 of the Federal Property and Administrative Services Act of 1949 (FPASA), 40 U.S.C. § 102. See 31 U.S.C. § 3551(3). FPASA defines a federal agency as “an executive agency or an establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol, and any activities under the direction of the Architect of the Capitol).” 40 U.S.C. § 102(5). An executive agency is “an executive department or independent establishment in the executive branch of the Government,” or “a wholly owned Government corporation.” *Id.* § 102(4).

AgFirst is a borrower-owned bank created more than 100 years ago as a government-sponsored enterprise, and is therefore not a wholly owned Government corporation. Moreover, the protester has neither alleged nor made any showing that AgFirst is an executive department or an establishment in the executive, judicial, or legislative branches of the federal government. While the protester asserts that AgFirst is a subsidiary of FCA, and that FCA is an independent executive agency, FCA--whose input we

² In its initial protest, CenturyLink stated that it was protesting the decision by AgFirst “on behalf of the” GSA to issue the task order to Granite. Protest at 1. GSA requested either dismissal of the protest or removal of GSA as the assigned agency, on the basis that “the procurement at issue was not conducted by GSA.” Electronic Protest Docketing System No. 5. In response, the protester stated that it did not oppose GSA’s request to be removed from the proceedings “in the event it is confirmed that GSA had no role in the procurement, despite conflicting information included in the [s]olicitation materials.” Response to Dismissal Req. at 1. We see no basis to conclude that the procurement was conducted by GSA, nor has the protester provided facts or allegations showing otherwise.

sought regarding this question--explains that AgFirst is not a sub-entity of FCA; instead, FCA is an “arms-length regulator of AgFirst.” FCA Letter at 1. In addition, FCA states that it is not a party to the contract action and is not the procuring agency.³ We find this explanation to be persuasive and see no reason to consider AgFirst to be a sub-entity of FCA.

The protester nevertheless argues that our Office has jurisdiction by virtue of a provision in the solicitation that states:

Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the [GAO], shall be served on the Contracting Officer. . . .

Solicitation at 58. Nothing in this provision, however, establishes that AgFirst meets the CICA definition of a federal agency subject to our bid protest jurisdiction. Nor are we persuaded that a procuring entity such as AgFirst could choose to make itself subject to our bid protest jurisdiction under CICA, via a solicitation or otherwise, where Congress has not.⁴

In sum, CenturyLink has failed to demonstrate that our Office has jurisdiction over the bid protest. Accordingly, the protest is dismissed.

Edda Emmanuelli Perez
General Counsel

³ CenturyLink was given an opportunity to respond to the FCA letter, but did not do so. After the response period provided by our Office, CenturyLink did submit a letter contending that AgFirst’s failure to object to GAO’s jurisdiction indicates that AgFirst “clearly submitted themselves to the jurisdiction of the GAO.” September 21 CenturyLink Letter at 1. We note, however, that AgFirst is not a party to this proceeding. Accordingly, we are not persuaded that AgFirst’s failure to make a filing in this protest can reasonably be considered a concession of GAO’s jurisdiction.

⁴ While our Office has limited nonstatutory jurisdiction to consider protests pursuant to 4 C.F.R. § 21.13, the protester has not asserted that we have jurisdiction over its protest pursuant to that section. Instead, the protester relies on CICA provisions to assert that GAO has jurisdiction over the protest. See Resp. to Dismissal Req. at 4.