



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: United Capital Investments Group

File: B-410284

Date: November 18, 2014

Ronald H. Uscher, Esq., and Nick R. Hoogstraten, Esq., Peckar & Abramson, PC, for the protester.

Djama Osman, for Libya Oil Djibouti, an intervenor.

Kathleen A. Murphy, Esq., and Marit Diana Bank, Esq., Defense Logistics Agency, for the agency.

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DIGEST

Protest challenging agency's affirmative determination of responsibility is denied where protester fails to demonstrate that agency unreasonably did not consider available, relevant information or otherwise violated statute or regulation.

DECISION

United Capital Investments Group (UCIG), of McLean, Virginia, protests the award of a contract to Libya Oil Djibouti, SA (LOD) under request for proposals (RFP) No. SP0600-14-R-0204, issued by the Defense Logistics Agency for the supply of various petroleum products. UCIG maintains that the agency unreasonably found LOD to be a responsible contractor.

We deny the protest.

The RFP contemplated the award of a requirements-type contract to supply various petroleum products to be delivered throughout Africa. This protest is confined to the award of two contract line items (CLINs): CLIN 001-341, for the supply of diesel fuel to Camp Lemonnier, Djibouti, and CLIN 700-34, for the supply of diesel fuel to Chebelly Air Field, Djibouti. These two CLINs were awarded to LOD as the firm

submitting the lowest-priced, technically acceptable proposal; UCIG submitted the next-low, technically acceptable proposal for these CLINs.¹

UCIG argues that the agency unreasonably found LOD to be a responsible contractor. The protester contends that there is an outstanding judgment against LOD in Djibouti that the agency failed to consider in making its responsibility determination. UCIG maintains that LOD does not intend to pay fines imposed by the judgment, and that the monetary value of those fines is sufficiently large that it is reasonable to be concerned that LOD may terminate its operations in Djibouti rather than perform the awarded contract.

Our Office will consider a protest challenging an agency's affirmative determination of responsibility where the protester identifies evidence raising serious concerns that, in reaching the responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2014). In this connection, the protester must present specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. The Geo Group, Inc., B-405012, July 26, 2011, 2011 CPD ¶ 153 at 6-7. The information in question must concern very serious matters, for example, potential criminal activity or massive public scandal. Id.

We find no merit to UCIG's protest. The record shows that the judgment in question stems from the activities of a predecessor concern, Shell Djibouti, during the time frame of 1997-2001. Agency Report at 1. During that time, Shell Djibouti was found to be responsible for polluting activities resulting in a judgment imposing fines on the concern. In 2008, Shell Djibouti was acquired by LOD and, as part of that acquisition, Shell Djibouti's potential liability for the judgment was transferred to LOD. Id. The record shows that there was continuing litigation concerning the fine, and that the Court of Appeals of Djibouti and, ultimately, the Supreme Court of Djibouti, found the awardee liable for the fine as the successor in interest to Shell Djibouti in June, 2014. Protest, exhs. 4, 5. All parties agree that these judgments were entered.

The only evidence offered by the protester in support of its allegation that LOD intends to terminate its operations in Djibouti as a consequence of the judgment is a story included in two news sources, one entitled "Maghreb Confidential" and another entitled "African Intelligence" published more than a month after the

¹ UCIG's original protest took issue with the award of two additional CLINs, but the protester subsequently withdrew its protest concerning these other CLINs. Protester's Opposition to Agency's Motion to Dismiss, Sept. 4, 2014, at 1.

agency's affirmative responsibility determination.² Protester's Comments, exhs. 1 and 2. The story represents that an unidentified source of the publication reported that LOD had informed the Djibouti Ministry of Energy that the firm will be unable to pay its fines. Id.

In contrast to the protester's news story, the record includes a letter from the Djiboutian Minister of Energy. In that letter, the Minister states that LOD and the Ministry are engaged in good faith negotiations concerning the fines. Specifically the Minister states:

Libya Oil Djibouti is one of the two major oil operating companies in Djibouti together with TOTAL Djibouti. It is fully licensed by the Ministry of Energy to operate in the territory of the Republic of Djibouti. In addition, Libya Oil Djibouti is a reputable corporate citizen in the sense that it employs a sizable number of manpower and substantially contributes to the tax revenue of the Republic of Djibouti.

With regards to the environmental legal issue, it is worth noting that the origin of the case dates back to over 14 years and the companies who were [involved in the litigation] were Shell Djibouti, TOTAL Djibouti and Mobil Djibouti respectively. Therefore Libya Oil who purchased Shell Djibouti in 2008 only inherited the problem and accordingly the related legal judgment whose implementation is currently under negotiation.

Agency Report, exh. 17, Letter from Djibouti Ministry of Energy, at 3.³ The record also includes a supply agreement between LOD and the Djibouti Oil Supply company, a Djiboutian government-owned oil supplier that all offerors were required to use in connection with performance of the contract. AR, exh. 4, Supply Agreement. Finally, the agency notes that LOD already has been delivering petroleum supplies within Djibouti under other CLINS of the contract that was awarded to LOD. Agency Report at 6.

² The first of these sources appears to be a weekly newsletter published in Paris, and the second appears to be a web-based aggregator of other publications. See <http://www.africaintelligence.com/mce>. The same story appears verbatim in both sources.

³ The protester also submitted a letter from the Secretary General of the Ministry (as opposed to the Minister himself) that predates the Minister's letter. That letter appears to provide a generic statement of the responsibilities of a concern holding a license to import, store, transport and distribute hydrocarbons within the country in the event that the concern plans to stop or interrupt its activities. Protester's Opposition to Agency's Motion to Dismiss, Sept. 4, 2014, exh. 1.

In the final analysis, the protester's argument essentially relies on a single news story, published more than a month after the agency's affirmative responsibility determination. That news story, in turn, relies on an unidentified source for its information. We conclude that the protester has not shown that the contracting officer unreasonably failed to consider available, relevant information, the nature of which would be expected to have a strong bearing on whether LOD should be found responsible.

The protest is denied.

Susan A. Poling
General Counsel