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Decision

Matter of: Bahrain Telecommunications Company, B.S.C.

File: B-410614.2

Date: August 10, 2015

Daniel J. Kelly, Esq., McCarter & English, LLP, for the protester.
Shelly L. Ewald, Esq., Watt, Tieder, Hoffar & Fitzgerald, L.L.P., for 2Connect W.L.L., the intervenor.

James E. Durkee, Esq., and James W. DeBose, Esq., Defense Information Systems Agency, for the agency.

Stephanie B. Magnell, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the agency reasonably evaluated the awardee's quotation as technically acceptable, and protester's remaining arguments are dismissed where protester lacks direct economic interest to be an interested party.

DECISION

Bahrain Telecommunications Company, B.S.C., doing business as "Batelco," of Manama, Kingdom of Bahrain, protests the issuance of a delivery order to 2Connect W.L.L., also of Manama, Kingdom of Bahrain, under solicitation No. TSR RE20FEB145280 (RFQ), which was issued by the Defense Information Systems Agency (DISA), Defense Information Technology Contracting Organization (DITCO), for installation and maintenance of a communications circuit between U.S. military bases in Qatar and Bahrain. The protester contends that the agency erred first in determining that 2Connect's quotation satisfied the terms of the solicitation and, second, in determining that Batelco's quotation was technically unacceptable. The protester also alleges that the agency failed to provide it with meaningful discussions.

The protest is denied in part and dismissed in part.

BACKGROUND

On March 27, 2014, DISA issued the RFQ, requesting quotations from vendors holding existing ordering agreements with DITCO for telecommunications services. RFQ at 1. The procurement was conducted under Federal Acquisition Regulation (FAR) part 12, commercial items, using an inquiry/quote/order process. Agency Report (AR), Tab 31, Basic Agreement, at 1. Award was to be made to the vendor whose quotation proposed the lowest-priced, technically acceptable solution. RFQ at 9. The agency reserved the right to conduct discussions. Id.

The solicitation required vendors to propose solutions for installation and maintenance of a communications circuit between Al Udeid Air Base, Qatar, and Naval Support Agency Bahrain, Bahrain. RFQ at 1. Vendors were obliged to affirmatively commit to satisfying all technical aspects of the solicitation and address any aspects that the vendor was unable or unwilling to satisfy. Id. at 6. As relevant here, vendors were required to propose a route for the communications circuit that was diverse from existing communications circuits, that is, geographically separated by no less than the minimum distances prescribed in the RFQ. RFQ at 18; RFQ amend. 0005, at 1. Proposed routes were also required to avoid specific countries, transmission media, and networks. RFQ at 18. Specifically, the solicitation mandated that:

The diversity and avoidance requirements set forth in this document shall be adhered [sic] to and maintained throughout the term of the service. Detailed diagram(s) shall be provided to substantiate [sic] compliance with the specified diversity and avoidance requirements set forth are met for the end-to-end service. The telecommunication provider shall provide a plan of how and when the physical route and diversity/avoidance will be provided if not currently available.

RFQ at 20 (capitalization removed). Among the specific requirements, the solicitation stated that proposed cabling route must demonstrate physical “[d]iversity from the other high bandwidth trunk from Bahrain to Capodichino and must be 50 meters diverse from [communications route] GCCIX-1.” RFQ amend. 0001, at 7. Vendors proposing routes that relied on the network infrastructure of other providers were required to provide a copy of a signed usage agreement with those providers. RFQ at 23.

Five vendors submitted quotations by the August 20 due date, including Batelco and 2Connect. The agency made award to 2Connect, finding it had submitted the lowest-priced, technically acceptable quotation. AR at 6.

Following initial award, Batelco filed a protest with our Office on October 8, arguing that the agency had failed to ensure that 2Connect’s quotation conformed to the solicitation requirements. Protest, B-410614, at 1. On October 23, the agency filed

a notice of corrective action, advising that it would re-evaluate Batelco's and 2Connect's existing quotations, issue evaluation notices, if necessary, and complete a new source selection evaluation and decision based on the new evaluations. Notice of Corrective Action, B-410614 (Oct. 23, 2014). On this basis, we dismissed the protest as academic. Batelco Telecomms. Co., B.S.C., B-410614, Oct. 24, 2014.

The agency completed its planned corrective action by conducting discussions with Batelco and 2Connect, soliciting final revised quotations, and evaluating the revised quotations. AR at 2. The agency's final evaluation was as follows:¹

	Technical Sufficiency	Past Performance	Price
Batelco – Option 1	Not Acceptable	Satisfactory	\$17,420,200
Batelco – Option 2	Not Acceptable	Satisfactory	\$16,020,000 ²
2Connect	Acceptable	Neutral	\$11,984,000

AR, Tab 26, Price Negotiation Memorandum, at 2, 3, 9. The agency determined that 2Connect's quotation was technically acceptable and that Batelco's quotation was technically unacceptable on several grounds, including a failure to provide maps demonstrating compliance with the geographic diversity requirement and a failure to provide signed usage agreements with its subcontractors. Id. at 2, 3, 5-9.

DISA again made award to 2Connect as the vendor with the lowest-priced, technically acceptable quotation. This protest followed.

¹ Batelco submitted two different quotations, which were independently evaluated.

² Batelco protests--and the agency effectively concedes--that the agency's final evaluation erroneously considered Batelco's option 2 price to be \$20,459,600 when in fact it was approximately \$4 million less. Protester's Comments (June 18, 2015), at 8; AR at 2 n.3. However, given that the procurement was awarded on a lowest-priced, technically acceptable basis, and that Batelco's correct option 2 price was still over 33 percent higher than 2Connect's price, we find that even in light of this error, Batelco would not be in line for award as a result of our denial of the protester's challenge to the evaluation of 2Connect's technical acceptability, as discussed below. As a result, we find that there was no prejudice to Batelco from the agency's error and therefore no basis to sustain the protest.

DISCUSSION

Batelco contends that 2Connect's quotation failed to satisfy a material requirement of the solicitation and DISA erred in determining it was technically acceptable. Protest at 6-9. Batelco further argues that DISA erred in concluding that Batelco's own quotation was technically unacceptable. Id. at 12-18. Finally, the protester alleges that the agency failed to provide it with meaningful discussions regarding whether its quotations satisfied the solicitation's geographic diversity and avoidance requirements. Id. at 11. For the reasons below, we find the agency's evaluation of 2Connect's quotation was reasonable, and that therefore Batelco, as the higher-priced vendor, is not an interested party because even if we find the agency also erred in determining that Batelco's quotation was technically unacceptable, Batelco lacks the economic interest to be an interested party.

DISA's Evaluation of 2Connect's Quotation

Batelco claims that the agency's evaluation of 2Connect's quotation is flawed because 2Connect's quotation failed to satisfy the solicitation's geographic diversity and avoidance requirements. Id. at 7. As discussed above, the solicitation provided that quotations for cable routes must demonstrate geographic "[d]iversity from the other high bandwidth trunk from Bahrain to Capodichino" and "must be 50 meters diverse from [communications route] GCCIX-1." RFQ amend. 0001, at 7.

In reviewing protests challenging an agency's evaluation, our Office does not reevaluate quotations; rather, we review the agency's evaluation to determine whether it was reasonable and consistent with the solicitation, as well as applicable statutes and regulations. ASRC Research & Tech. Solutions, LLC, B-406164, B-406164.3, Feb. 14, 2012, 2012 CPD ¶ 72 at 8; see also Halfaker & Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 6.

Batelco first claims that "the existing Bahrain to Capodichino circuit and 2Connect's proposed national network for the Bahrain to Qatar circuit will both traverse the same path" because "[n]o other systems are available to 2Connect from the Naval Base in Juffair." Protest at 7-8. Batelco further asserts that 2Connect's proposed route is not at least 50 meters from GCCIX-1 at a connection point in Al Jasra. Id. at 8.

DISA states that 2Connect's quotation and evaluation notice responses show that the awardee's "proposed solution for the Bahrain to Qatar circuit will not traverse the same path as [the] Bahrain to Cap[o]aichino circuit." AR at 11. Specifically, the agency contends that the maps and text in 2Connect's quotation facially demonstrate that the proposed route meets the solicitation's diversity requirements. Supp. AR at 4-5 (July 9, 2015), citing AR, Tab 7, 2Connect Quotation, at 4-9. The agency further argues that "Batelco has failed to provide any significant evidence to support its allegation that 2Connect's proposed route traverses the same path as

the [Bahrain-Capodichino] circuit.” Supp. AR at 5-6. The intervenor also contends that its quotation unambiguously shows the existing Bahrain to Capodichino circuit and its proposed Bahrain to Qatar circuit as two separate paths, highlighted in red and yellow in its quotation. Intervenor’s Supp. Comments (July 10, 2015) at 2, citing AR, Tab 23, 2Connect Quotation, at 5. The intervenor states that its quotation shows “that these two circuits will connect to the [DELETED] in Al Jasra, Bahrain, at two separate and distinct connection points.” Intervenor’s Comments (June 18, 2015) at 5, citing AR, Tab 23, 2Connect Quotation, at 9.

We agree with the agency’s conclusion that 2Connect’s quotation contains maps that show the existing and proposed routes without overlap, and also show separate points of exit from Bahrain. AR, Tab 23, 2Connect’s Quotation, at 8-9, figures 3-2, 3-3 and 3-4. Therefore, on the record before us, we have no basis to conclude that the agency erred in concluding that 2Connect’s quotation demonstrates diversity from the Bahrain to Capodichino route and separation in Al Jasra, and therefore satisfied the requirements of the solicitation.

Batelco next argues that 2Connect’s “available network infrastructure does not provide for diversity in the circuit within the section of the system located within Bahrain.” Protest at 7 (emphasis added). The protester notes that 2Connect is currently engaged in litigation with Batelco before the Bahraini Telecommunications Regulatory Authority (TRA), wherein 2Connect charges that “Batelco has engaged in delays or refusals to permit [2Connect to] access” to certain communications conduits in Bahrain (a claim Batelco does not deny). Declaration of Batelco Chief Global Business Officer (June 18, 2015) ¶ 7. Batelco contends that the awardee’s arguments before the TRA demonstrate that 2Connect will not be able to satisfy the solicitation’s geographic diversity requirement. Protester’s Comments (June 18, 2015) at 5; see also Declaration of Batelco Chief Global Business Officer (June 18, 2015) ¶ 5, 7.

The intervenor argues that its actual compliance with the diversity and avoidance requirements during contract performance is a matter that our Office does not review as part of our bid protest jurisdiction. We agree. In this regard, the RFQ did not require vendors to demonstrate their current ability to access the route proposed for the circuit, but rather propose a compliant route and affirmatively commit to satisfying the RFQ’s technical requirements. See RFQ at 6, 20. As discussed above, 2Connect proposed a route that met the solicitation’s requirements for diversity and avoidance.

Moreover, DISA states that it “does not know whether 2Connect has been denied access to the King Fahd Causeway (KFC) and the Agency did not consider

2Connect's ability to access the KFC in its evaluation of 2Connect's proposal."³ Supp. AR at 5. The agency also responds that "Batelco's allegation that 2Connect 'has been denied access to the KFC' is irrelevant because 2Connect's proposed route [DELETED]." Id.

To the extent that Batelco argues that it has, in effect, rendered 2Connect's quotation technically unacceptable by preventing 2Connect from implementing its proposed route, we find that this is a matter of contract administration that we do not review as part of our bid protest function. Ashland Sales & Serv. Co., B-408969, Nov. 1, 2013, 2013 CPD ¶ 256 at 1 (matters of contract administration are within the discretion of the contracting agency and are not a matter for our review); Esegur-Empresa de Segurança, SA, B-407947, B-407947.2, Apr. 26, 2013, 2013 CPD ¶ 109 (whether awardee ultimately complies with the solicitation requirements is a matter of contract administration that is the responsibility of the contracting agency, not our Office); Sea Box, Inc., B-410220, Nov. 17, 2014, 2014 CPD ¶ 352 at 2 (whether awardee will successfully deliver the items required by the contract involves a matter of contract administration, which is not for our review).

Regarding the underlying question of whether Batelco will grant 2Connect access to its conduits, we find that this matter is a private dispute that is, equally, not a matter that our office will consider. InSpace 21 LLC, B-410852, B-410852.3, Dec. 8, 2014,

³ Batelco also alleges that 2Connect's proposal contained a material misstatement regarding the route of the existing Bahrain-Capodichino circuit. Protester's Comments (June 18, 2015) at 6. The intervenor responds that the allegation of a misstatement is untimely. Intervenor's Supp. Comments (July 10, 2015), at 6. We agree. Our Bid Protest Regulations provide that a post-award protest must be filed no later than 10 days after the protester knew, or should have known, of the basis of protest. 4 C.F.R. § 21.2(a)(2). Here, the protester's comments regarding the initial agency report and any supplemental protest were required to be filed by June 15. We granted the protester's request for an extension to file comments on June 18, cautioning that such "extension . . . does not extend or toll our timeliness rules for filing supplemental protest grounds." GAO Email, June 9, 2015, 4:38 pm. The protester filed its comments on June 18, and thus any additional protest grounds therein were untimely. The protester argues that its allegation of a misstatement in 2Connect's proposal relates to its original protest ground of the agency's miscalculation of 2Connect's proposal. We disagree with the protester's characterization of its arguments. Batelco's original protest argued that 2Connect's proposal set forth a route that the agency unreasonably evaluated; Batelco's new argument--that 2Connect's proposal misstates the proposed route (implying that the agency was misled by relying on this misstatement)--relied on documents first provided in the agency report, specifically the awardee's proposal. Not only is the new argument untimely, it implicitly confirms that 2Connect's proposed route, as set forth in its proposal, satisfies the solicitation's diversity requirements.

2014 CPD ¶ 363 at 2 (firms' conflicting interpretations of operating agreement is a private dispute that our office will not review). Therefore, to the extent that the protester asks us to address matters of contract administration or private disputes, these protest grounds are dismissed.

Batelco Is Not an Interested Party

Next, DISA argues that Batelco is not an interested party to raise the remainder of its protest arguments, which concerns the agency's determination that the protester's quotation was technically unacceptable. AR at 14. We agree.

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 supplier 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). See also Four Winds Servs, Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57 at 2. Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., B-228470, Feb. 16, 1988, 88-1 CPD ¶ 151 at 2-3.

Here, we find that the protester is not an interested party to challenge the agency's evaluation of its own technical quotation. 4 C.F.R. §21.0(a)(1). Given our conclusion, above, that 2Connect's quotation was reasonably found technically acceptable, it follows that the protester is ineligible for award because even if Batelco's quotation were found to be technically acceptable, its price would remain higher than 2Connect's. Gorod Shtor, B-411284, May 22, 2015, 2015 CPD ¶ 162 at 3 (higher-priced protester is not an interested party to challenge an agency's determination that its quotation is technically unacceptable when award was to be made to the lowest-priced, technically acceptable vendor), citing Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. Batelco therefore lacks the requisite economic interest to further challenge the evaluation of its quotation, including the discussions that allegedly led to one of the agency's determinations of technical

unacceptability. Accordingly, the remaining bases of Batelco's protest are dismissed.

The protest is denied in part and dismissed in part.⁴

Susan A. Poling
General Counsel

⁴ Batelco also asserts that our Office's supplemental briefing schedule did not afford it adequate time to respond to DISA's supplemental agency report and 2Connect's supplemental comments. Protester's Supp. Comments (July 11, 2015) at 5-9. In particular, Batelco sought additional time to negotiate a redacted version of 2Connect's July 10, 2015, comments to provide to Batelco personnel for review. Id. We find Batelco was afforded adequate time for its counsel and experts to prepare its supplemental comments, given that (1) the assertions in 2Connect's comments related to 2Connect's business practices, and would therefore have been wholly redacted from any document released to Batelco's personnel, (2) Batelco agreed to the schedule in a conference call held on July 7, and (3) Batelco had two consultants admitted to the protective order issued in this protest to assist Batelco's counsel with technical issues.