



Decision

Matter of: Jana Construction Contracting LTD Company

File: B-423061; B-423062; B-423063

Date: December 9, 2024

Bahman K. Abdullah, for the protester.
Kiwie Tahir, for Blue Way, Transportation of All Types of Cargoes, Customs Clearance Services and Logistics Services LTD Company; and Omar Sulaiman, for Zana Group Company for General Contracts, the intervenors.
Parag J. Rawal, Esq., Megan O. Jorns, Esq., Susan Symanski, Esq., and William Wilcox, Esq., Department of the Army, for the agency.
Suresh S. Boodram, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests arguing that the agency unreasonably rejected its proposals for design-build services in Iraq are denied where the agency reasonably found the protester non-responsible based on the protester's ineligibility for base access as reflected in the Joint Contingency Contracting System.

DECISION

Jana Construction Contracting LTD Company, of Erbil, Iraq, protests the rejection of its proposals submitted pursuant to request for proposals (RFP) Nos. W5J9JE24R0004, W5J9JE24R0011, and W5J9JE24R0013, issued by the Department of the Army, Corps of Engineers (Corps) for design-build services at the Erbil Air Base located in Erbil, Iraq.¹ The protester contends that the agency unreasonably found the firm non-responsible.

¹ Protest B-423063 involves RFP No. W5J9JE24R0004, which sought proposals for design-build services for the combat aviation brigade headquarters; award was made to Zana Group Company for General Contracts, of Erbil, Iraq, at a total contract price of \$1,250,000. Protest B-423062 involves RFP No. W5J9JE24R00011, which sought proposals for design-build services for the vehicle maintenance hardstand building; award was made to Shanica Company for Transporting and Removing Mines Importing Explosive Materials and General Trading LTD, of Erbil, Iraq, at a total contract price

(continued...)

We deny the protests.

BACKGROUND

The agency issued the three RFPs at issue as part of the Corps's Transatlantic Expeditionary District's procurement effort at Erbil Air Force Base, with each RFP concerning a separate design-build construction project on the base. Contracting Officer's Statement (COS) at 1.² Each RFP contemplated the award of a single fixed-price contract issued under Federal Acquisition Regulation (FAR) Part 15, with selection to be made on a lowest price technically acceptable (LPTA) basis. Agency Report (AR), exh. 1, Conformed RFP No. W5J9JE24R0013, at 9, 23.

Relevant here, each RFP required offerors to be registered in the Joint Contingency Contracting System (JCCS). Pursuant to the National Defense Authorization Act of 2015, and as subsequently implemented by the U.S. Army Central Command (CENTCOM), agencies must ensure that all potential awardees for contracts to be performed in Africa and the Middle East are eligible for base access. Agencies determine an awardee's eligibility for base access by checking the JCCS vendor vetting database. Memorandum of Law (MOL) at 3; *see also Aria Target Logistics Servs.*, B-408308.23, Aug. 22, 2014, 2014 CPD ¶ 253 at 2 n.2. The RFPs here directed that: "Offerors must be successfully registered in the JCCS and their registration completely processed and active in the JCCS database to be considered eligible for award." RFP at 51. The RFPs further provided that the agency "may choose to search the JCCS database using the JCCS Company ID number supplied by the vendor to verify eligibility." *Id.*

The protester submitted timely proposals in response to each of the RFPs. Before evaluating proposals, the contracting officers reviewed offerors' information in the JCCS database. COS at 2. As to Jana, the available information in JCCS reflected that the firm was ineligible for base access. The Corps represents that the fields indicating base access eligibility are not visible to offerors in JCCS; the information supporting a firm's

\$1,104,016. Protest B-423061 involves RFP No. W5J9JE24R0013, which sought proposals for design-build services for the No Mercy aircraft maintenance hangar; award was made to Blue Way, Transportation of All Types of Cargoes, Customs Clearance Services and Logistics Services LTD Company, of Erbil, Iraq, at a total contract price \$2,139,860.

² Our Office initially developed the three protests separately; however, given the common issues presented, we are issuing this single consolidated decision resolving all three protests. The RFPs, agency report exhibits, and pleadings across the three protests are virtually identical with respect to the relevant facts and legal arguments. To avoid unnecessary redundancy, citations to the RFP, agency record, and pleadings are to those submitted in connection with B-423061, unless otherwise indicated.

ineligibility for base access is classified as national security sensitive information that is not to be disseminated to vendors, contractors, subcontractors or representatives thereof. *Id.* at 3-4 (*citing* Dept. of Defense Manual 5200.01-vol. 1, encl. 3, ¶¶ 17.b(1)(d) and (2)).

The Corps subsequently notified Jana that it was found to be non-responsible because its JCCS account “reflected a rating that rendered Jana ineligible for consideration of award.” AR, Tab 4, Notice of Unsuccessful Offeror at 1. On October 8, the Corps, represented by the contracting officers and the branch chief, held a debriefing with Jana regarding its unsuccessful offers. COS at 3. The Corps explained that, due to security requirements mandated by the Kurdistan Regional Government and its Asayish Security Forces, to access the Erbil Air Base, the RFPs were restricted to only those vendors on the Asayish List. *Id.* After addressing Jana’s ineligibility for base access as reflected in the JCCS, the Corps provided the firm with a point of contact for the JCCS database. *Id.* at 4. Following the debriefing, Jana filed these three protests with our Office.

DISCUSSION

Jana contends that the Corps erroneously found the firm non-responsible. Jana maintains that it was properly registered and active in the JCCS database.

The agency counters that the determinations that Jana was ineligible for award were in accordance with the terms of the solicitation. The Corps explains that the contracting officer checked Jana’s registration in the JCCS database and found that the firm had been determined ineligible for base access, which mandated a non-responsibility determination. MOL at 7. The agency states that a determination of base access eligibility is a matter of inherent commander authority determined by CENTCOM, and is not at the discretion of the contracting officer. *Id.* We find no basis on which to sustain the protests.³

In making a negative responsibility determination, a contracting officer is vested with a wide degree of discretion and, of necessity, must rely upon his or her business judgment in exercising that discretion. *Torres Int’l, LLC*, B-404940, May 31, 2011, 2011 CPD ¶ 114 at 4. Although the determination must be factually supported and made in good faith, the ultimate decision appropriately is left to the agency, since it must bear the effects of any difficulties experienced in obtaining the required performance. For these reasons, we generally will not question a negative determination of responsibility unless the protester can demonstrate bad faith on the part of the agency or a lack of any reasonable basis for the determination. *Colonial Press Int’l, Inc.*, B-403632, Oct. 18, 2010, 2010 CPD ¶ 247 at 2. Our review is based on the information available to the contracting officer at the time the determination was made. *Acquest Dev. LLC*, B-287439, June 6, 2001, 2001 CPD ¶ 101 at 3.

³ The agency filed consolidated requests for dismissal and agency reports. For the reasons set forth herein, we deny the protests on the merits.

We recognize that, under these circumstances, the contracting officer's judgment is limited by a military command decision to deny Jana access to military installations. Here, the protester contends that it was properly registered in the JCCS system, maintained an active status in the JCCS database, and provided similar services for clients in the EAB. Therefore, Jana does not understand why, in this instance, it was denied base access. Protest at 2; comments at 2. The information underlying a vendor's vetting rating, which is visible to government personnel in the JCCS system, however, is national security information that an agency is not permitted to disclose to a vendor. COS at 4. We have also explained that a commanding officer of a military base has wide discretion when deciding whom to exclude from a base and such decisions concern matters outside a contracting officer's domain. See, e.g., *Leidos Innovations Corp.*, B-414289.2, June 6, 2017, 2017 CPD ¶ 200 at 6; *Sohail Global Grp.*, B-413132, August 9, 2016, 2016 CPD ¶ 215 at 3. Accordingly, it is reasonable for a contracting officer to find a contractor non-responsible when there has been a determination that the contractor cannot access required facilities for reasons of national security and, as a consequence, the contractor would be unable to perform the contract. *Leidos Innovations Corp.*, B-414289.2, June 6, 2017, 2017 CPD ¶ 200 at 5-6. Further, while the protester may not understand why it has been denied base access, as the United States Court of Federal Claims has stated, although the vendor vetting rating process does not provide a contractor with prior notice of its ineligible status or an opportunity to present rebuttal evidence, requiring traditional due process in the rating process would adversely affect national security. *Afghan Premier Logistics*, B-409971, Sept. 26, 2014, 2014 CPD ¶ 293 at 3 (citing *NCL Logistics Co. v. United States*, 109 Fed. Cl. 596, 620 (2013)). The court elaborated that the requirements of due process vary given the circumstances and, when the required notice would necessarily disclose classified material and could compromise national security, normal due process requirements must give way to national security concerns. *NCL Logistics*, 109 Fed. Cl. at 620. We agree.

In light of CENTCOM's determination that Jana is ineligible for base access, the Corps's decisions to find the protester non-responsible were reasonable.⁴

The protests are denied.

Edda Emmanuelli Perez
General Counsel

⁴ We note that in past cases involving non-responsibility determinations based on JCCS base access ineligibility our Office has been provided for *in camera* review classified information supporting the underlying base ineligibility determination. *See, e.g., Leidos Innovations Corp., supra; Sohail Global Grp., supra.* In contrast, here the Corps represented that the determination was made by CENTCOM officials based on "classified data to which the [Corps] is not privy." MOL at 7. Because the base access ineligibility determination was made by CENTCOM as part of its military authority, and not by the procuring agency as part of its procurement authority, we did not request--and do not believe it is necessary to review--such classified materials. In this regard, our jurisdiction under the Competition in Contracting Act only extends to violations of alleged procurement laws or regulations, see 31 U.S.C. § 3552(a), and does not extend to the propriety of national security determinations. Under these circumstances where the contracting agency must comply with the directions of military personnel, we do not believe it is necessary for our resolution of the protests to view the underlying classified bases for the base access ineligibility determinations.