



Decision

Matter of: Gulfnet Communications Company, W.L.L.

File: B-417516

Date: June 21, 2019

Ahmad Al Ibrahim for the protester.

Travis L. Vaughan, Esq., Defense Information Systems Agency, for the agency.

April Y. Shields, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably questioned whether quotation submitted under a name other than the protester's could form the basis for a contract binding the protester.
 2. Protester that did not submit a quotation that could form the basis for a binding contract is not an interested party to challenge award.
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DECISION

Gulfnet Communications Company, W.L.L., of Kuwait City, Kuwait, protests the issuance of a delivery order to VIVA Bahrain B.S.C. Closed, of Manama, Bahrain, under solicitation No. HC102119QA033, issued by the Defense Information Systems Agency to acquire a telecommunications circuit between two U.S. military bases in the United Arab Emirates. The protester challenges the agency's evaluation of the awardee's quotation.¹

We dismiss the protest on the basis that the protester is not an interested party.

¹ This protest is not subject to a GAO protective order because Gulfnet opted to proceed pro se. Accordingly, our discussion of some aspects of the record is necessarily general in order to limit references to non-public information. Nonetheless, GAO reviewed the entire record in camera in preparing our decision.

BACKGROUND

The solicitation, issued on January 17, 2019, contemplates the issuance of a delivery order for leased fiber optic transmission services between SAS Al Nakhl Air Base and Al Dahfra Air Base, both in the United Arab Emirates, for an anticipated period of 60 months. See Agency Report (AR), Tab 2, Inquiry/Quote/Order Solicitation, at 1. The competition was limited to firms that previously had been awarded a basic agreement by the agency's Defense Information Technology Contracting Organization (DITCO); in this regard, the solicitation states: "Contractors/[Telecommunication Providers] that do not have a current DITCO [basic agreement] must execute one with the appropriate DITCO office prior to submitting any quotes." Id. at 65; see also id. at 53 (Standard Provision 01 – DITCO Basic Agreement).² The solicitation also advises that quotations "must include all required documents and responses . . . to be considered eligible for award," and that award would be made on a lowest-price, technically acceptable basis. Id. at 65.

Of relevance here, the record establishes the following undisputed facts: Gulfnet holds a basic agreement with DITCO, which was established in May 2012. In August 2018, Gulfnet attempted to amend its basic agreement to include "B.Online" as an "assumed company business name[.]" In December, the agency informed Gulfnet that, in order to use a different name in its basic agreement with DITCO, Gulfnet would need to register its different name in the System for Award Management (SAM) and execute a change-of-name agreement in accordance with FAR § 42.1205; the agency further advised that Gulfnet should include only the registered name in its quotations until it completed those requirements. Gulfnet did not register a different name in SAM or execute a change-of-name agreement; moreover, Gulfnet's basic agreement with DITCO was not amended to include B.Online, and there is no basic agreement between B.Online and DITCO. See Comments, Exhibit 2, Email from Gulfnet to Agency regarding Updated Basic Agreement, Aug. 9, 2018, at 1; AR, Tab 1, Email from Agency to Gulfnet regarding Name Change Agreement Requirement, Dec. 12, 2018, at 1; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 5-8.

On or before March 18, 2019, the agency received five quotations, including one from "B.Online (formerly known as Gulfnet Communications)." AR, Tab 7, Quotation,

² Competition for these requirements was confined to firms that previously had been awarded a basic agreement by DITCO. None of the parties has challenged our jurisdiction to consider this protest against the issuance of the delivery order placed under the recipient's basic agreement. A basic agreement is not a contract, see Federal Acquisition Regulation (FAR) § 16.702(a). Consequently, this procurement is not governed by the limitation on our jurisdiction, 10 U.S.C. § 2304c(e)(1)(B), to consider protests challenging the issuance of a task or delivery order valued at more than \$25 million. See Batelco Telecomms., Co. B.S.C., B-412783 et al., May 31, 2016, 2016 CPD ¶ 155 at 1-2 n.1; see also C&B Constr., Inc., B-401988.2, Jan. 6, 2010, 2010 CPD ¶ 1 at 2-5.

Mar. 18, 2019, at 2; COS/MOL at 7. After an administrative review, the agency determined that B.Online's quotation was non-compliant because B.Online did not hold a basic agreement with DITCO as required by the solicitation. See COS/MOL at 7-8. The agency sent B.Online a clarification evaluation notice to which the vendor responded by providing Gulfnet's basic agreement number. AR, Tab 13, Evaluation Notice Response, Mar. 28, 2019, at 1-4. The agency then excluded B.Online's quotation from the competition, noting that B.Online had submitted Gulfnet's basic agreement. See COS/MOL at 7-8.

On April 16, the agency issued the delivery order to VIVA Bahrain. This protest followed.

DISCUSSION

Gulfnet challenges the agency's evaluation of the awardee's quotation. In response, the agency asserts that Gulfnet is not an interested party to raise its protest because it did not submit a quotation in response to the solicitation. Although Gulfnet claims that it submitted the quotation under the name of B.Online, the agency responds as follows: the solicitation was limited to firms that had previously been awarded a basic agreement by DITCO; Gulfnet was aware of the requirements for a different name to be recognized before the solicitation was issued; Gulfnet did not comply with those requirements; and "[n]othing in the record reflects that B[.]Online will be bound by the basic agreement between the government and Gulfnet." COS/MOL at 14. In response, Gulfnet claims that it is "doing business as" B.Online, and that it did not change its existing basic agreement or establish a new basic agreement with DITCO "because such changes were not needed." Comments at 1-2.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror 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)(1). 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. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id.

Here, as a preliminary matter, we find nothing unreasonable in the agency's concern that Gulfnet would not be bound by B.Online's quotation. The central concern in every case where there is doubt regarding which firm is the actual vendor or offeror is the risk that there will be no party that is bound to perform the obligations of the contract. See Dick Enterprises, Inc.--Protest and Recon., B-259686.3, Nov. 16, 1995, 95-2 CPD ¶ 223 at 3. As noted above, the record shows that the quotation was submitted by "B.Online (formerly known as Gulfnet Communications)." AR, Tab 7, Quotation at 2 (Mar. 18, 2019). Moreover, despite the instructions from the agency and the requirements in the

solicitation, Gulfnet did not establish a new basic agreement or amend its existing basic agreement with DITCO to use a different name. Therefore, on this record, we find no basis to question the reasonableness of the agency's concern that an award based on the quotation submitted by "B.Online (formerly known as Gulfnet Communications)" would not bind Gulfnet. AR, Tab 7, Quotation at 2 (Mar. 18, 2019).³

Accordingly, because Gulfnet would not be in line for award even were we to sustain its challenge to the agency's evaluation of the awardee's quotation, Gulfnet does not qualify as an interested party under our Bid Protest Regulations.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

³ Even were we to accept that Gulfnet and B.Online are the same entity, Gulfnet does not have the requisite direct economic interest to challenge the award. The quotation that it claims it submitted failed to meet other requirements of the solicitation and, therefore, was otherwise ineligible for award. See COS/MOL at 7-8.