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Decision

Matter of: Integral Systems, Inc.

File: B-405303.1

Date: August 16, 2011

Joseph D. West, Esq., Gibson, Dunn & Crutcher LLP; J. Scott Hommer III, Esq., Venable LLP, for the protester.

Nathan C. Guerrero, Esq., General Services Administration, for the agency.

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DIGEST

Parent corporation is not interested party to protest elimination from consideration for award of proposal submitted by parent's wholly-owned subsidiary where parent fails to show that subsidiary is other than separate and distinct legal entity with which government would contract if award were made under proposal in question.

DECISION

Integral Systems, Inc. (ISI), of Columbia, Maryland, protests the exclusion from the competitive range of a proposal submitted by its wholly-owned subsidiary, CVG, Inc. (CVG), of Chantilly, Virginia, in response to request for proposals (RFP) No. QTA-010-CTA-0003 issued by the General Services Administration (GSA) for worldwide commercial satellite communications (SATCOM) solutions. Integral asserts that the agency's evaluation of the proposal was unreasonable in several respects.

We dismiss the protest because ISI is not an interested party.

BACKGROUND

On July 6, 2010, the agency issued the solicitation connected with this protest. The solicitation sought a broad array of commercial SATCOM services and equipment and contemplated the award of multiple indefinite-delivery/indefinite-quantity contracts. RFP §§ C.1.1, M.1. Awards were to be made to offerors that submitted proposals deemed "most advantageous to the Government" based on the following four evaluation factors: technical/management, corporate experience, past

performance, and price. Id. §§ M.1, M.1.1 - M.1.4. Offerors were to submit a separate proposal volume for each factor. Id. § L.22.

On August 19, CVG submitted a proposal in response to the solicitation. In various places, the proposal referred to CVG as a “wholly owned subsidiary of Integral Systems, Inc.” E.g., Protest exh. C, CVG Proposal Cover Letter. Regarding CVG’s relationship to ISI, the proposal explained as follows: “In early 2010, Integral Systems purchased CVG, which will eventually be renamed Integral Systems SATCOM Solutions Division.” Protest exh. D, CVG Proposal, Vol. II, at 2. The proposal further explained that “[i]n the future, CVG will be doing business as Integral Systems SATCOM Solutions.” Protest exh. C, CVG Proposal, Vol. I, at 1.

Notwithstanding the references to ISI, the proposal reflected that CVG was the offering entity. For instance, the title pages of both the technical/management and corporate experience volumes listed the commercial and government entity (CAGE) code and data universal numbering system (DUNS) number of CVG, rather than the CAGE code and DUNS number of ISI. Protest exh. C, CVG Proposal, Vol. I, Cover Page; Protest exh. D, CVG Proposal, Vol. II, Cover Page. Further, the cover letter that accompanied the proposal was signed by a director of CVG, Inc.¹ Protest exh. C, CVG Proposal Cover Letter. Finally, throughout the technical/management and corporate experience volumes of the proposal, the entity presenting the proposal was referred to as “CVG.”²

The proposal communicated, however, that ISI would have a role in performing the contemplated contract. For example, the proposal stated that “[DELETED],” Protest exh. D, CVG Proposal, Vol. II, at 1, and that “[DELETED],” Protest exh. C, CVG Proposal, Vol. I, at 19. The proposal additionally stated: “[DELETED].” Protest exh. D, CVG Proposal, Vol. II, at 1.

Following an evaluation of CVG’s proposal, the agency, by letter dated June 21, 2011, informed CVG that the proposal had been excluded from the competitive range because it received evaluation ratings of unacceptable under the technical/management and corporate experience factors. Protest exh. B, Proposal Exclusion Letter, at 1. A debriefing followed.

¹ The cover letter also referenced a prior SATCOM contract that was awarded to CVG. Protest exh. C, CVG Proposal Cover Letter.

² For instance, the overview section of the technical/management volume stated that “CVG is dedicated to fully satisfying our customers[.]” Protest exh. C, CVG Proposal, Vol. I, at 1. Similarly, the introduction section of the corporate experience volume stated that “CVG historically has focused on . . . the global SATCOM marketplace” and that “CVG has delivered on 43 task orders” under a prior SATCOM contract. Protest exh. D, CVG Proposal, Vol. II, at 1.

On July 7, ISI filed a protest with our Office challenging various aspects of the agency's evaluation of CVG's proposal. The subject line of the protest letter stated: "Protest of Integral Systems, Inc. of Exclusion from the Competitive Range Under [GSA] Solicitation No. QTA-010-CTA-0003." Protest at 1. The protest began with the statement that "Integral Systems, Inc., d.b.a. CVG, Inc. . . . hereby protests its exclusion from the competitive range . . ." *Id.* Throughout the protest, the proposal at issue was referred to as "Integral's proposal." *E.g., id.* at 2, 3, 6-8, 10, 12.

On July 20, the agency filed a request with our Office for dismissal of the protest, arguing that ISI is not an interested party to protest the exclusion of CVG's proposal from the competitive range.

DISCUSSION

The agency points out that the protest was filed by ISI, but that a different entity--CVG--submitted the proposal at issue in the protest. Request for Dismissal at 1-2. The agency argues that because ISI was not an actual offeror in connection with the procurement, ISI does not qualify as an interested party under our Bid Protest Regulations, and, therefore, the protest should be dismissed. *Id.* at 6. We agree.

Under the Competition in Contracting Act of 1984 (CICA) and our Bid Protest Regulations, our Office only may decide a protest filed by an "interested party," which the statute defines as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract." 31 U.S.C. § 3551(2) (2010); 4 C.F.R. § 21.0 (2011). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *Sales Res. Consultants, Inc.*, B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 5.

As discussed above, the proposal at issue here was submitted by CVG.³ As also discussed above, this protest was filed by ISI, not CVG. Accordingly, ISI is not an "actual or prospective bidder or offeror" and therefore does not qualify as an interested party under CICA and our Bid Protest Regulations.

ISI argues that it is an interested party because the proposal indicated that the Integral organization as a whole would provide the proposed solution. Protester Response to Request for Dismissal at 2. It is true that the proposal indicated that employees and resources of ISI would be used to perform the contract. However, regardless of the affiliation of the individuals--or the owner of the resources--that would be used perform the contract, ISI has not demonstrated that the entity with

³ ISI acknowledges that the "proposal was submitted under the name of CVG, Inc." Protester Response to Request for Dismissal at 1.

which the government would contract would be ISI, and not CVG. To the contrary, ISI states that if the agency awarded a contract pursuant to the proposal, the agency “would be in privity with CVG, Inc.” Protester Supp. Response to Request for Dismissal at 1. Accordingly, notwithstanding the degree of ISI’s contemplated involvement in performance of the contract, the record shows that CVG, and not ISI, was the actual offeror, and ISI therefore does not qualify as an interested party for purposes of filing a protest with our Office. See 4 C.F.R. § 21.0.

ISI also argues that it is an interested party because the proposal indicated that a single, post-acquisition entity—the Integral Systems SATCOM division—would perform the contract. Protester Response to Request for Dismissal at 1, 4. As described above, the proposal stated that CVG soon would become and do business as the Integral Systems SATCOM Solutions Division. Protest exh. C, CVG Proposal Cover Letter. Although ISI asserts that CVG currently is doing business as Integral Systems SATCOM Solutions Division, ISI has not shown that ISI—as opposed to CVG or CVG doing business as Integral Systems SATCOM Solutions Division—is the entity with which the government would enter into a contract pursuant to the proposal.⁴ For example, ISI has not demonstrated that the Integral Systems SATCOM Solutions Division has become an unincorporated division of ISI such that ISI would be the entity with which the government would contract if an award were made under the proposal at issue. In sum, ISI has not shown that CVG is other than a separate and distinct entity from ISI. Accordingly, we find no merit to ISI’s argument that because CVG is doing business as the Integral Systems SATCOM division, ISI is an interested party.⁵ Cf. Trandes Corp., B-271662, Aug. 2, 1996, 96-2 CPD ¶ 57 at 4 (no substitution of offerors where unincorporated division of offeror corporation submitted final proposal revision and record reflected that unincorporated division did not exist apart from offeror corporation and only could enter contracts as offeror

⁴ Following the agency’s filing of the request for dismissal, our Office provided ISI two opportunities to make this showing.

⁵ ISI’s argument relies on Security Assist. Forces & Equip. Int’l, Inc., B-199366, Feb. 6, 1981, 81-1 CPD ¶ 71, a decision in which our Office concluded that the parent of a wholly-owned subsidiary qualified as an interested party. Protester Response to Request for Dismissal at 5-6. We decline to apply the conclusion reached in Security Assist. here because that decision was rendered before both the enactment of CICA, which defines an “interested party” as an “actual or prospective bidder or offeror,” and before our Bid Protest Regulations expressly defined an interested party. See 4 C.F.R. Pt. 21 (1981). We note also that the circumstances here are different than those in Bulloch Int’l, B-265982, Dec. 26, 1995, 96-1 CPD ¶ 5, and E & R, Inc., B-255868, Mar. 29, 1994, 94-1 CPD ¶ 218, wherein our Office recognized that an agent may represent an interested party in a protest where the agent specifies the interested party in the protest and has been expressly authorized to act for that party.

corporation); Alabama Aircraft Indus., Inc.– Birmingham v. United States, 83 Fed. Cl. 666, 681-682 (2008) (offeror qualified as interested party because offeror was same legal entity following change in name).

Finally, ISI argues that it is an interested party because it would benefit from award of the contract, or, conversely, suffer without award of the contract. Protester Response to Request for Dismissal at 4. We have no doubt that ISI has an economic interest in the award of a contract to its subsidiary, CVG. Such interest, however, is not the direct economic interest of an actual or prospective offeror contemplated by CICA. See Allied Tube & Conduit, B-252371, Apr. 27, 1993, 93-1 CPD ¶ 345 at 2.

The protest is dismissed.

Lynn H. Gibson
General Counsel