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Decision

Matter of: Aria Target Logistics Services

File: B-408308.23

Date: August 22, 2014

Keith L. Baker, Esq., Barton, Baker, Thomas & Tolle, LLP, for the protester.
Lt. Col. Mark E. Allen and Capt. Eric J. Singley, Department of the Air Force, for the agency.

Glenn G. Wolcott, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that the agency unreasonably rejected its proposal to perform trucking services throughout Afghanistan is denied where record shows that protester's proposal was assigned an extremely high risk force protection rating, based on classified information that could not be disclosed to the protester but was reviewed by our Office, and provides a reasonable basis for the agency's decision to reject the proposal.

DECISION

Aria Target Logistics Services (ATL), of Kabul, Afghanistan, protests the U.S. Transportation Command's (USTRANSCOM)¹ rejection of ATL's proposal to provide trucking services in Afghanistan pursuant to request for proposals (RFP) No. HTC711-13-R-R002. ATL asserts that it is entitled to a contract award because it submitted a technically acceptable proposal that offered a lower price than that of some of the awardees.

We deny the protest.

¹ USTRANSCOM is one of nine unified commands within the U.S. Department of Defense (DOD). The mission of USTRANSCOM is to provide air, land, and sea transportation for the DOD, both in peace and wartime.

BACKGROUND

The agency issued the solicitation in February 2013, seeking proposals to provide secure and reliable means of transporting various cargoes throughout Afghanistan. The solicitation was divided into three “suites,” reflecting three different types of cargo--bulk fuel, dry cargo, and heavy cargo--and provided that, under each suite, the agency would award “approximately twelve” contracts to the responsible offerors submitting the lowest-priced, technically acceptable proposals. Agency Report (AR), exh. 3, RFP, at 64.

The solicitation also required all offerors to be registered in the Joint Contingency Contracting System (JCCS),² and stated “[t]o be considered for award . . . offerors . . . shall have . . . an ‘Approved Vendor’ status in JCCS.” RFP at 66. Consistent with this requirement, the U.S. Central Command (CENTCOM) has instituted a contractor vendor vetting program for contractors seeking to do business with the U.S. Government in Afghanistan.³ The objective of this program is to “identify vendors who have clear ties to the insurgency or who are involved in nefarious activities.” AR, exh. 2, Vendor Vetting Standard Operating Procedures, Sept. 21, 2012, at 1. Pursuant to the vetting program, vendors are assigned one of four force protection risk ratings: [redacted] (moderate risk); [redacted] (significant risk); [redacted] (high risk); or [redacted] (extremely high risk). Id. Contractors with moderate or significant risk ratings ([redacted]) are entered into the JCCS as “IJC[⁴] Approved.” Id. Vendors with high or extremely high risk ratings ([redacted]) are entered into the JCCS as “IJC Rejected.” Id.

Initial proposals were submitted in April 2013. During the following year, the agency amended the solicitation, established a competitive range, conducted discussions, and requested final proposal revisions. By April 2014, the agency had completed its evaluation of proposals, and concluded that, for Suite I, ATL had submitted a technically acceptable proposal with a price that was sufficiently low to place ATL in line for contract award. Accordingly, as a prospective awardee, USTRANSCOM

² The JCCS is a real time contract data repository and reporting tool for contracts in Iraq and Afghanistan, and is available to all DOD contracting commands. <https://www.jccs.gov/olvr>; see also U.S. *Efforts to Vet Non-U.S. Vendors Need Improvement*, GAO-11-355 (June 2011).

³ CENTCOM is one of the Department of Defense’s (DOD) six combatant commands. CENTCOM’s area of responsibility includes Afghanistan, and it is responsible for issuing policy guidance regulating activities within its jurisdiction. Agency’s Legal Memorandum/Contracting Officer’s Statement (ALMCOS), June 16, 2014, at 3.

⁴ International Security Assistance Force Joint Command.

sought information from CENTCOM regarding ATL's status under the vendor vetting program.

On April 27, CENTCOM advised USTRANSCOM that, based on an April 22 risk assessment, ATL's risk rating was extremely high ([redacted]). ALMCOS at 7. On April 30, the contracting officer reviewed classified information supporting the risk rating. Based on that information, the contracting officer determined that ATL was not a responsible contractor and, therefore, ineligible for award. Id. at 7-9.

Thereafter, ATL was notified that it had not been selected for award, and was further advised of the non-responsibility determination. With regard to the non-responsibility determination, the agency stated: "Due to reasons of national defense and national security, the information which led to this determination is not releasable." AR, exh. 17, ATL Debriefing, at 1. This protest followed.

DISCUSSION

ATL protests that it should have been awarded a contract, complaining that the agency has not provided ATL with the information which led to the agency's non-responsibility determination and asserting that "[s]uch information was required to be provided." Protest at 5.

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. 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, in the environment of a warzone, 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. Id. We agree.

Here, in considering ATL's protest, and the agency response thereto, our Office reviewed classified information supporting the agency's risk assessment and non-responsibility determination. Based on our review, we think the agency's decision to reject this proposal was reasonable.

The protest is denied.

Susan A. Poling
General Counsel