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Decision

Matter of: Yona-Brixtel, LLC

File: B-416649; B-416649.2

Date: September 12, 2018

Jerry Alfonso Miles, Esq., Deale Services, LLC, for the protester.
Andy Mansoor, Yona-Brixtel, LLC, for the intervenor.
Tudo N. Pham, Esq., Department of State, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The protester is not an interested party to challenge the agency's evaluation of a joint venture's proposal where there is a dispute regarding the authority of the protester to file a protest on behalf of the joint venture.

DECISION

A protest was filed on behalf of Yona-Brixtel, LLC, of McLean, Virginia,¹ against the rejection of the proposal it submitted in response to request for proposals (RFP) No. 19AQMM18R0059, issued by the Department of State for support services. The protester challenges the agency's evaluation of its proposal, and also asserts that the agency awarded the contract at an unreasonably high price, failed to provide it with an adequate debriefing, and allowed offerors only five pages to answer three pages of questions.

We dismiss the protest.

As relevant here, Yona-Brixtel is a joint venture, limited liability company, which was established between Yona Systems and Brixtel Corporation (Brixtel). Yona-Brixtel Joint Venture Agreement, June 14, 2017, at 1. Yona-Brixtel and another offeror submitted

¹ The protest was filed with our Office by an employee of Yona Systems Group, Inc. (Yona Systems), one of two joint venture parties in Yona-Brixtel. References to "the protester" are to Yona Systems, as represented by this officer.

proposals in response to the solicitation. After evaluating the proposals, the agency eliminated Yona-Brixtel's proposal as technically unacceptable.

On August 3, an employee of Yona Systems, and the intended project manager if Yona-Brixtel was awarded the contract, filed this protest on behalf of Yona-Brixtel. On August 8, an officer of Brixtel emailed our Office and indicated that "Yona-Brixtel forgoes all our rights to any protest" and "Yona-Brixtel should not protest the award." Email from Brixtel Officer, Aug. 8, 2018. According to the Brixtel officer, pursuant to the terms of the joint venture agreement, the protest should have been initiated only after consensus from all the joint venture executives. Email from Brixtel Officer, Aug. 14, 2018. An officer of Yona Systems responded and stated that Yona Systems is the "managing venture" of Yona-Brixtel. Decl. of President, Yona Systems, Aug. 15, 2018. The Yona Systems officer also stated that as the managing venturer, it delegated joint venture management duties to the employee of Yona Systems who filed the protest with our Office. Id. As such, Yona Systems states that the individual who filed the protest was authorized to do so on behalf of the joint venture "in relation to his 'management duties.'" Id.

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); 4 C.F.R. § 21.0. 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.

The record reflects that the protester and Brixtel have conflicting interpretations of the terms of the joint venture agreement, and as such, disagree regarding whether the protester is authorized to file this protest on behalf of the joint venture. Our Office has faced a similar issue before in InSpace 21 LLC, B-410852, B-410852.3, Dec. 8, 2014, 2014 CPD ¶ 363. In that protest, as here, the protester and joint venture partner asked that our Office resolve the issue as to who had authority under the joint venture agreement to file a protest. As stated in our prior decision, InSpace 21 LLC, our Office will not resolve a dispute between private parties.²

Because our Office will not review the dispute between the protester and Brixtel regarding their interpretations of the joint venture agreement, we cannot conclude that this protest was filed by an interested party. Where, as here, a protester's interested

² We note that the joint venture agreement provides that the parties agree that disputes that cannot be settled by mutual agreement are subject to the jurisdiction of the Commonwealth of Virginia. See Yona-Brixtel Joint Venture Agreement, June 14, 2018, at 4.

party status is in question, the protester may not simply assert that it is an interested party. InSpace 21 LLC, supra; see also Latvian Connection, LLC, B-410147, B-410149, Sept. 4, 2014, 2014 CPD ¶ 266 at 4. In the case of joint ventures, our Office has stated that, a joint venture, not any individual firm, is the appropriate interested party to protest the contracting agency's action. InSpace 21 LLC, supra; see Advanced Commc'n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 4 n.4. Our Bid Protest Regulations require a protester to affirmatively demonstrate that it is an interested party; a protester's failure to meet its obligation requires dismissal of the protest. 4 C.F.R. §§ 21.0(a)(1); 21.1(c)(5); 21.1(i); see Latvian Connection, LLC, supra, at 5. Based on the record before us, and in light of the unresolved dispute, we find that the protester has not demonstrated that it has the authority to file this protest on behalf of Yona-Brixtel. Accordingly, in these circumstances, the protester does not qualify as an interested party for purposes of filing a protest with our Office.³

The protest is dismissed.

Thomas H. Armstrong
General Counsel

³ Just prior to issuing our decision, the protester (Yona) forwarded our Office an email from the officer of Brixtel who previously had objected to the protest and argued that the protester lacked authority to file a protest on behalf of the joint venture. According to the email, the Brixtel officer withdraws his objections to the filing of the protest, as long as two conditions are met. One of the conditions is that the entire record of his opposition to the protest, including emails from Brixtel and the protester's counsel, be removed from the Electronic Protest Docketing System (EPDS). Our Bid Protest Regulations state that parties must provide all communications with GAO to the agency and other participating parties through EPDS or email. 4 C.F.R. § 21.3(a). Those communications become part of our bid protest record and, in this case, will not be removed. Since one of the conditions for withdrawal of the objection to the protest by a joint venture partner cannot be met, the objection still stands and this protest is dismissed. This latest communication, and all communications filed on this matter to date, leads us to conclude that the protester has not established its status as an interested party to pursue this protest.