



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Total Procurement Services, Inc.

File: B-272343.2 et al.¹

Date: August 29, 1996

Richard Snyder for the protester.

Rowena H. Conkling, Esq., Department of Transportation, and Michael Colvin, Department of Health and Human Services, for the agencies.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Value-Added Network (VAN) is not an interested party under the Bid Protest Regulations eligible to protest the purchase item descriptions contained in request for quotations (RFQ) issued through the Federal Acquisition Computer Network where there is no evidence that the VAN does or intends to do anything other than provide communication services, and the remote possibility that it might or could submit quotes does not make it an actual or prospective offeror with a sufficiently direct interest in the RFQs to be considered an interested party.

DECISION

Total Procurement Services, Inc. (TPS) protests a number of requests for quotations (RFQ) issued by the John A. Volpe National Transportation Systems Center, United States Department of Transportation (DOT), and the National Institutes of Health (NIH) of the Department of Health and Human Services (HHS). The HHS RFQs are for various medical and other equipment for use at NIH and the DOT RFQs are for a variety of computer equipment and supplies. TPS alleges that the RFQs contain inadequate and/or defective purchase item descriptions.

We dismiss the protests because the protester is not an interested party.

¹B-272344.2; B-272345.2; B-272347.2; B-272348.2; B-272349.2; B-272453; B-272512; B-272513; B-272514; B-272515; B-272516; B-272517; B-272566; B-272813; B-272814; B-272815; B-272890; B-272891; B-272892; B-272900; B-272901; B-272902; B-272903; B-272904; B-272923; B-272941; B-274082; B-274174; B-274270; B-274271; B-274272; B-274342; and B-274343.

These RFQs were issued through the Federal Acquisition Computer Network (FACNET). FACNET is a government-wide electronic data interchange systems architecture that provides for electronic data interchange of acquisition information between the government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access. 41 U.S.C. § 426(a), (b)(3) (1994); Federal Acquisition Regulation (FAR) § 4.501. It creates an electronic market place for procuring supplies and services in which agencies can post notices of and receive responses to solicitations, post notices of contract awards, and issue orders where practicable; and private sector users can access notice of solicitations, receive orders, and access information on contract awards. 41 U.S.C. § 426(b)(1), (2).

A contracting agency enters solicitation data into FACNET through a business application program on its computer. The data is then electronically transmitted to a government gateway, which is a computer/communications system performing a variety of data management functions, such as converting business application program data into the proper data format for subsequent transmission. After processing by the gateway, the information is transmitted to a network entry point, which is also government operated, and relayed to Value-Add Networks (VAN).² VANs, which are private sector entities, then provide information obtained from FACNET to their customers, who have registered to do business with the government and are known as trading partners. Trading partners can submit quotations through FACNET to the contracting agency in reverse order to that described above.

Both DOT and HHS contend that TPS does not qualify as an interested party eligible to maintain these protests because it is not an actual or prospective supplier or trading partner that could or would submit quotes on its own behalf in response to the RFQs, but rather is a VAN used to submit quotes by trading partners via FACNET. In this regard, DOT notes that TPS has not previously submitted quotes on its own behalf to the Volpe Center for computer equipment or supplies and there is no suggestion that TPS intends to do so here. HHS also notes that TPS has not registered as a trading partner to submit quotes via FACNET, as required by FAR § 4.503(a), which suggests that TPS does not intend to submit quotes on its own behalf via FACNET. DOT further asserts, and has provided documentation that evidences, that TPS is not a manufacturer or vendor of computer equipment or supplies, and that it lacks the capacity and experience to bid and supply the computer equipment to be acquired under the RFQs. Pursuant to section 21.3(c) of our Bid Protest Regulations, 4 C.F.R. § 21.3(c) (1996), DOT requested that the

²A VAN, typically a commercial information service, provides access to FACNET as well as communications services, electronic mailboxes and other services for electronic data interchange transmissions. See FAR § 4.501.

protester furnish documentation, such as a description of its capabilities as a responsible vendor of computer equipment and the names of references that can provide past performance information on similar procurements, establishing that it is an interested party with capability to provide the solicited items. We found the request appropriate and requested TPS to comply.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1994), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0 (a). Our Regulations therefore require that a protest set forth all information establishing that the protester is an interested party for the purpose of filing a protest. 4 C.F.R. § 21.1(c)(5). Whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151.

In response to the dismissal requests, TPS does not assert that it intends to submit responses on its own behalf to the RFQs or that it had the capability of fulfilling the agencies requirements. Instead, TPS states that there is no requirement that it have previously submitted quotes to be considered an interested party. For example, while TPS does not deny that it has not registered as a trading partner as contemplated by FAR § 4.503(a), it claims that this would not preclude it from submitting a quote if it chose to do so. TPS further explains that although it is a VAN, which develops and markets its own electronic data interchange software,³ VANs are not prohibited from becoming trading partners that could submit quotes on their own behalf. TPS also claims that it is an authorized distributor of PKZIP (compression software) for mid-range and mainframe computers, which it has marketed to the Defense Logistics Agency and other clients and has offered in response to several electronic data interchange and "regular" RFQs for computer hardware and software issued by agencies other than HHS and DOT. However, TPS does not allege that it has previously offered or supplied the items solicited by these RFQs, or that it has the capability, desire, or intent of doing so. Nor has TPS provided any documentation showing that its business includes supplying the items

³TPS states that it sells computers, modems, ancillary equipment, accessories and supplies to potential trading partners who are interested in conducting business with the government via electronic data interchange. FACNET contemplates Value-Added Services, which can provide services beyond communications to customers, ranging from translation and segregation of data to complete turn-key business systems support for customers. FAR § 4.501.

called for by these RFQs, despite being requested to respond to the agency request for such information to substantiate TPS' interested party status.⁴

As indicated, a protester has the burden of setting forth all information establishing that it is an interested party for the purpose of filing a protest. 4 C.F.R.

§ 21.1(c)(5). Where, as here, a protester's interested party status is in question, the protester may not simply assert that it might take steps to become a party that would be considered interested; instead, the protester generally must show that it intends to compete under the solicitation, and, where appropriate, that it has the necessary capacity and experience to compete; that it has competed in the past on similar projects; or that it has performed similar projects in the past. See PPG Indus., Inc., B-272126, June 24, 1996, 96-1 CPD ¶ 285; Bulloch Int'l, B-265982, Dec. 26, 1995, 96-1 CPD ¶ 5.

Here, as indicated, TPS' response to the agency assertions that TPS has neither the intent or the capability to supply the solicited items is simply to state that it could submit a quote if it chose to do so, without any indication that TPS intends or intended to do so, or that it has the capability of satisfying the requirements of the RFQs if it did do so. Nor does TPS assert that it is acting as an authorized agent of an actual or prospective bidder (trading partner). Under such circumstances, we do not believe that TPS has established that it is a "prospective bidder or offeror" with a sufficiently "direct economic interest" in these RFQs to be considered an interested party.

TPS also asserts that VANs have a direct economic interest in the government issuing clear and concise RFQs because VANs disseminate RFQs by federal supply class (FSC), and that when the government incorporates an erroneous FSC the wrong potential trading partners receive the RFQ and blame the VAN for providing useless quotes to them for a fee. This economic interest, even if true, is not that of an actual or prospective bidder, but that of a VAN, and thus is not sufficient to

⁴The only documentary support submitted was in the form of a TPS invoice reflecting a transaction with an unidentified nongovernment customer for "insect repellent," "inspect repellent," TPS electronic data interchange software lease, electronic mail box rental, delivery charge and a fastract modem.

qualify TPS as an interested party. See Bulloch Int'l, supra. While we have allowed VANs to protest the terms of their license agreement to provide VAN services, TPS has not presented that case here. See Total Procurement Servs., Inc., B-255934.3, Aug. 16, 1994, 94-2 CPD ¶ 74.

The protest is dismissed.

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