

GAO Sustains Protest Based On Improper Actions Of Acquisition Services Contractor

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In an unusual case, the Government Accountability Office sustained a protest alleging that an acquisition services contractor had acted unilaterally to prevent an offeror from participating in a Department of State competition. The [decision](#) serves as a reminder that procuring agencies bear responsibility for the actions of acquisition services contractors.

The Department of State sought to procure first aid kits and other medical supplies as a small business set-aside through reverse-auction procedures. The procurement was conducted by FedBid, an online acquisition services provider. The protestor, Latvian Connection, LLC, alleged that FedBid precluded it from submitting an auction bid by barring the protestor from accessing the auction website. Relying upon a provision in the website's terms of use, FedBid suspended the protestor's account on the basis that "Latvian Connection has taken actions to repeatedly and purposely interfere with FedBid's business relationships." The precise nature of the dispute between FedBid and Latvian Connection was not developed in GAO's public decision.

GAO held that in barring access to the website, FedBid had made a de facto non-responsibility determination with regards to Latvian Connection, and that as a small business, any non-responsibility determination regarding Latvian Connection required a referral to the Small Business Administration. GAO rejected the Department of State's argument that FedBid acted unilaterally, holding that the Department of State, through FedBid, precluded Latvian Connection from competing on the basis of integrity.

Latvian Connection enjoyed little direct benefit from the decision, as the Department of State had already overridden the stay of contract award based on urgent and compelling circumstances and performance was complete. Moreover, the approximate value of the procurement was merely \$5,000. However, this decision may serve to remind procuring agencies that agencies must closely monitor the actions of acquisition services contractors because the actions of those contractors may well be imputed to agencies in the protest context.

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