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**Comptroller General
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**United States Government Accountability Office
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The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: Vetsummit, LLC

File: B-405187

Date: August 29, 2011

Peter D. Brosse, Esq., and Sarah M. Duffy, Esq., Meyers, Roman, Friedberg & Lewis, for the protester.

Lisa Marie Clark, Esq., Department of Veterans Affairs; and Kenneth Dodds, Esq., U.S. Small Business Administration, for the agencies.

Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected protester's bid is denied where agency referred concerns over the protester's responsibility to the Small Business Administration (SBA), which declined to issue a certificate of competency, and where the protester's claim that the SBA had failed to consider vital information bearing on the protester's responsibility lacked merit.

DECISION

Vetsummit, LLC, of Chesterland, Ohio, a small business, protests the award of a contract to JJW Construction, LLC, of Powell, Ohio, by the Department of Veterans Affairs (VA) under invitation for bids (IFB) No. VA-250-10-IB-0166 for construction services to renovate the surgical intensive care unit (SICU) at the Louis Stokes Cleveland VA Medical Center, Wade Park Campus, in Cleveland, Ohio. Vetsummit argues that it submitted the lowest-priced bid, but that the VA rejected the bid after unreasonably concluding that Vetsummit was not responsible and was not an eligible service-disabled veteran-owned small business (SDVOSB) concern under the set-aside terms of the IFB.

We deny the protest.

BACKGROUND

The VA issued the IFB on June 25, 2010, seeking bids to perform specified renovations of the SICU. The IFB was set aside for SDVOSB concerns and required that bidders be "verified for ownership and control and . . . listed in the Vendor

Information Pages [VIP] database (<http://www.VetBiz.gov>)” in order to be eligible for award. IFB at 14 (incorporating text of VAAR § 852.219-10). The IFB also incorporated by reference the provision at Federal Acquisition Regulation (FAR) § 52.214-19, titled “Contract Award--Sealed Bidding--Construction,” which specified that the contract would be awarded to “responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.” FAR § 52.214-19; see IFB at 17.

On September 21, the VA opened timely bids from eight firms, including JJW and Vetsummit. Supp. Agency Report (AR), Tab A, attach. E, Standard Form 1409, at 1. Vetsummit submitted the lowest-priced bid of \$1,749,000, and JJW submitted the next lowest-priced bid of \$1,824,600. Id. The contracting officer checked the VIP database and found that Vetsummit was not listed in the VIP database; therefore, the agency concluded that the firm was ineligible for award. AR at 1-2; attach 6, VIP Database Search Results, at 1-3. On June 1, 2011, the VA posted a notice that the contract had been awarded to JJW as the lowest-priced eligible bidder.

On June 10, Vetsummit filed this protest, arguing that it was listed in the VIP database and eligible for award. Vetsummit also argued that even though the VA had not questioned Vetsummit’s responsibility, if the VA had indeed found the firm non-responsible, that finding was erroneous, and furthermore, the issue of responsibility should have been referred to the SBA. Protest at 2-5.

Although questions of Vetsummit’s responsibility (as distinct from its eligibility as an SDVOSB firm) appear not to have been formally raised earlier, on June 23, the VA contract specialist sent a letter to the Small Business Administration (SBA), referring the issue of Vetsummit’s responsibility for review under the SBA certificate of competency (COC) process. Supp. AR, Tab A, Letter from Contracting Officer to SBA, June 23, 2011, at 1. In the referral letter to the SBA, the contract specialist explained that Dunn & Bradstreet reports classified Vetsummit as “high risk,” described Vetsummit as “significantly delinquent” in performing two contracts with the VA, and questioned whether Vetsummit had sufficient employees to perform at least 15 percent of the cost incurred for personnel with its own employees as required under the terms of the set-aside clause. Id. at 1-2. Along with the referral letter, the VA sent 14 exhibits to the SBA, including the results of business credit inquiries, Vetsummit’s bid and bid bond, and performance reports for two ongoing contracts between Vetsummit and the VA. See id., attachs. C, D, F, M, & N.¹

¹ On June 28, the contracting officer sent a second letter to the SBA with additional information. Supp. AR, Tab B, Letter from Contracting Officer to SBA, June 28, 2011, at 1. This second letter and accompanying attachments informed the SBA of the results of an on-site responsibility survey, which concluded, among other things, that Vetsummit had not established that it was veteran-controlled. Id.

On June 27, the SBA sent a letter to Vetsummit, formally notifying the firm that it had been found non-responsible for award under the IFB because of concerns by the VA about “paperwork submittal, scheduling, performance, communications, and coordination issues.” Vetsummit Supp. GAO Filing, Aug. 8, 2011, attach. B, Letter from SBA to Vetsummit, June 27, 2011, at 1. The letter invited Vetsummit to file an application for a COC to overcome the stated responsibility concerns. Id.

On July 5, Vetsummit applied to the SBA for a COC. Vetsummit Supp. GAO Filing, Aug. 8, 2011, at 1 & attach B. At the request of an SBA representative, Vetsummit submitted additional financial information about the firm’s financial arrangements, and those of two affiliated companies: Summit Construction, Inc., and Vetspen, LLC. Id. at 1 & attach. C. Vetsummit also submitted resumes of its key personnel; past performance references and project details for work performed by Summit Construction; and general references to a “Pittsburgh project” and a “Cleveland Cares project” that were partially complete. See id., attach. B, COC Application. However, Vetsummit did not provide SBA a response to the issues identified by the SBA as the basis for the VA’s non-responsibility finding, which included the firm’s “scheduling, performance, communications, and coordination.” Id., attach. B, Letter from SBA to Vetsummit, June 27, 2011, at 1.

On July 19, the SBA declined to issue a COC to Vetsummit for this procurement. Supp. AR, Tab C, Letter from SBA to VA, July 19, 2011, at 1. The SBA explained that the denial was based on the SBA’s conclusion that Vetsummit had not demonstrated satisfactory past performance or sufficient financial resources to perform the contract. Id.

DISCUSSION

Vetsummit’s protest challenges both the SBA’s decision not to issue a COC, and the VA’s determination that Vetsummit is not an eligible SDVOSB firm. With respect to the SBA’s decision not to issue a COC, Vetsummit argues that the SBA failed to consider vital information about Vetsummit’s performance and financial capability. In particular, Vetsummit argues that the SBA did not properly consider information provided by the firm (e.g., the financial resources and past performance of its affiliated company, and the performance history of certain key personnel). Comments at 5-6. Vetsummit also contends that the VA did not provide complete and accurate information to the SBA about the firm’s past performance, therefore misleading the SBA to believe there were problems with Vetsummit’s performance. Vetsummit Supp. GAO Filing, Aug. 3, 2011, at 2-5.

Generally, our Office will not consider the SBA’s decision to issue, or not issue, a COC. However, our rules recognize narrow exceptions where the SBA

failed to consider vital information bearing on the firm’s responsibility due to the manner in which the information was presented to or withheld from the SBA by the procuring agency.

Bid Protest Regulations, 4 C.F.R. § 21.5(b)(2) (2011) (emphasis added). A protester's disagreement with a procuring agency over the cause for poor past performance is not sufficient to invoke GAO jurisdiction over a resulting denial of a COC. See Oakland Corp., B-230717.2, July 27, 1988, 88-2 CPD ¶ 91 at 3-4.

Here, Vetsummit's allegations do not meet the requirements for invoking our jurisdiction to review the denial of a COC. Vetsummit has not shown that the alleged error by the SBA in concluding that Vetsummit lacked adequate financial resources or past performance was caused by the manner in which the information was presented to or withheld from the SBA by the procuring agency (in other words, by the VA). To the contrary, Vetsummit asserts that the firm itself submitted extensive financial and past performance information to the SBA about Vetsummit and its affiliated companies in connection with its COC application. To the extent that the protester argues that the VA did not accurately portray Vetsummit's performance history, its arguments reflect only disagreement with the VA's assessment, which are inadequate to invoke our Office's limited jurisdiction to review the denial of a COC. See Oakland Corp., supra. That is, Vetsummit's disagreement with the VA's past performance assessment does not establish that the VA's presentation of information to the SBA was inaccurate, incomplete, or misleading.

In short, Vetsummit has not shown that it was the manner in which the VA presented information to the SBA that was improper, but only that the SBA found Vetsummit's response unpersuasive. Thus, Vetsummit has not provided a basis to invoke our Office's jurisdiction to consider the SBA decision not to issue a COC.

The protest is denied.²

Lynn H. Gibson
General Counsel

² As noted above, Vetsummit also argues that it has been verified as an SDVOSB firm, and assured of its listing in the VIP database by the VA, and that the VA's conclusion that the firm is ineligible is flawed. However, the denial of a COC, which reflects the firm's non-responsibility to perform this contract, means that the Vetsummit has not been prejudiced by any error in its omission or deletion from the VIP database. Thus, even if the record fails to explain the absence of Vetsummit from the VIP database, any error in that regard does not affect the likelihood of awarding a contract to Vetsummit.