



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Government Contracting Services, LLC

File: B-405996

Date: January 17, 2012

Mark S. Mills for the protester.

Russell L. Emery, Esq., Department of Veterans Affairs, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected protester's low bid under a solicitation set aside for service-disabled veteran-owned small businesses (SDVOSB) is denied where the agency's Center for Veterans Enterprise determined prior to the due date for submission of bids that the protester did not qualify as an SDVOSB concern and this determination remained in effect at the time bids were due.

DECISION

Government Contracting Services, LLC (GCS) protests the rejection of its bid by the Department of Veterans Affairs (VA) under invitation for bids (IFB) No. VA-259-11-IB-0286, issued as a set aside for service-disabled veteran-owned small businesses (SDVOSB) for renovation of a patient waiting area at the VA Medical Center in Grand Junction, Colorado. GCS argues that the VA improperly rejected its low bid on the basis that the firm was not an eligible SDVOSB concern.

We deny the protest.

BACKGROUND

Under solicitations issued by the VA as SDVOSB set-asides, the VA is required to verify a firm's SDVOSB status through the VA-controlled database known as the vendor information pages (VIP) which is the database of businesses approved to participate in VA's veteran-owned small business program. 38 U.S.C. § 8127(f); 38 C.F.R. § 74.1. In this regard, the VA's Center for Veterans Enterprise (CVE) is the office responsible for reviewing applications and verifying the status of SDVOSB concerns for inclusion in the VIP database. 38 C.F.R. § 74.11.

Issued on August 17, 2011, the solicitation stated that all “bidders shall be certified by the [CVE] as [an SDVOSB] prior to submission of bids.” IFB at 1. Bid opening was scheduled for September 23, at 12:00 p.m.

At the time the solicitation was issued, the record shows that GCS’ application for inclusion as an SDVOSB in the VIP database had been denied by the CVE and, as of July 12, GCS had requested reconsideration of that decision. Protest, exh. 1, CVE’s Letter to GCS at 1 (Sept. 29, 2011). The record further shows that at the September 23 bid opening, GCS submitted the lowest of the four bids received but the firm’s status as an ineligible SDVOSB remained unchanged. As a result, when the contracting officer reviewed the VIP database, GCS was not listed. Agency Report, exh. 2. The agency reports that the contracting officer learned that GCS’ “certification had been denied and they were now in the appeals process.” Id. The contracting officer then rejected the protester’s low bid because the protester was not an eligible SDVOSB concern prior to bid submission, as required by the solicitation.

By letter dated September 29, the CVE ultimately granted GCS’ request for reconsideration and the firm was determined eligible to participate in VA’s veteran-owned small business program as an eligible SDVOSB concern. Protest, exh. 1, CVE’s Letter to GCS (Sept. 29, 2011). In this regard, the CVE’s September 29 letter granting GCS’ request for reconsideration concluded that GCS had submitted adequate additional information with its request, “including a revised Operating Agreement of GCS dated August 31, 2011” to demonstrate GCS’ compliance “with the requirements set forth in the verification guidelines.” Id. at 2. Furthermore, the letter advised that GCS’ SDVOSB eligibility was valid for a term of one year “from the date of CVE’s approval letter establishing verified status.” Id.

Award was made to another bidder on September 30. This protest followed.

DISCUSSION

GCS contends that as the low bidder it was entitled to receive the award because “at the time of the bid . . . [GCS was] merely awaiting an overdue ruling on our request for reconsideration.” Protester’s Response to Dismissal Request at 1 (Oct. 31, 2011).¹ We disagree.

¹ Throughout its protest GCS contends that had the CVE acted promptly on its reconsideration request the protester’s eligibility to compete would have been established before the bid opening date. VA’s regulations provide in relevant part that a firm’s reconsideration request will be completed “when practicable” within 60 days. 38 C.F.R. § 74.13(b). Because the VA has sole jurisdiction with regard to its decision regarding GCS’ verification application, GCS’ allegation of “undue delay”
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According to the terms of the IFB,² as mentioned above, a bidder had to be “certified”³ by the CVE as a valid SDVOSB prior to the submission of its bid, not prior to award. IFB at 1. As noted above, the record reflects that GCS submitted its SDVOSB application to the CVE prior to the submission of bids. However, the CVE rejected GCS’ application, concluding that it was not an eligible SDVOSB, and GCS remained in this ineligible status through September 29, after bid closing.⁴ While GCS ultimately prevailed on its request for reconsideration, its status as a valid SDVOSB, as determined by CVE, became effective on September 29 when it received the letter from the CVE resolving its reconsideration request. Thus, by the express terms of the IFB, the protester was ineligible to compete under this SDVOSB set aside. On this basis, we cannot conclude that the VA improperly rejected GCS’ bid.

The protest is denied.

Lynn H. Gibson
General Counsel

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does not present an issue for consideration by our Office. See MICCI Imaging Construction Co., Inc., B-405654, Nov. 28, 2011, 2011 CPD ¶ 259 at 3 n.3.

² GCS did not challenge the terms of the solicitation.

³ The solicitation’s use of the term “certified” appears to be synonymous with the term “verified” where the CVE is responsible for “verifying” the status of SDVOSB concerns.

⁴ The parties also discuss the applicability of IFB paragraph 2.10, 804.1102 Verification of Status of Apparently Successful Offeror (Oct 2010) (Deviation), which establishes a process whereby firms, “not currently listed as verified” by the CVE, can submit an application for verification, and obtain an expedited review of that application. As noted above, GCS had submitted an application for verification with the CVE, which was expressly denied. The VA has issued specific regulations to address those instances where a firm’s application has been denied. Specifically, firms such as GCS can request reconsideration pursuant to 38 C.F.R. § 74.13(a), the path chosen by GCS, or they may reapply, but are required to wait a period of at least six months before the agency will process the new application. See 38 C.F.R. § 74.14. Applying the Deviation language to GCS, which had previously been determined to be “ineligible,” would effectively provide GCS an additional bite at verification without first filing a request for reconsideration or having to wait the mandatory 6-month period before submitting a new application. Since there is no basis to conclude that the solicitation language at issue was intended to supersede this clearly established regulatory framework, we have no basis to conclude that it has any applicability here.