



Decision

Matter of: Goins Construction LLC

File: B-422695

Date: September 20, 2024

Corey Goins for the protester.

Deborah K. Morrell, Esq., Department of Veterans Affairs, for the agency.

Hannah G. Barnes, Esq., Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's rejection of its bid is not timely filed where protester failed to diligently pursue the information on which its protest is based.

DECISION

Goins Construction LLC, a service-disabled veteran-owned small business (SDVOSB) of Ozark, Missouri, protests the Department of Veterans Affairs' (VA) determination that Goins failed to submit a timely bid in response to invitation for bids (IFB) No. 36C25024B0016 to provide certain construction services. Goins asserts that the agency's determination in this regard was improper.

We dismiss the protest.

BACKGROUND

On April 19, 2024, the agency issued the IFB as an SDVOSB set-aside, seeking bids to perform roof repair services. Agency Report (AR), Tab 3, IFB at 1.¹ As amended, the IFB provided that a public bid opening would occur at "1:00 pm Local Time" on May 23

¹ The page numbers referenced in this decision are the Adobe PDF page numbers in the documents submitted.

at the VA's "Network Contracting Office (NCO) 10, 2780 Airport Drive, Suite 340, Columbus, Ohio."² AR, Tab 3b, IFB amend. 2 at 1.

Goins asserts that, on May 20, it provided its bid to the United States Postal Service (USPS) in Nixa, Missouri to be delivered to the agency via USPS's overnight delivery service. Protest at 2.

On May 21, the agency posted a notice on the SAM.gov website³ to inform bidders that, in addition to attending bid opening in person, "Interested Contractors may call into the bid opening [using Microsoft Teams]." AR, Tab 6, Special Notice at 2.

The bid opening occurred, as scheduled, at 1 p.m. on May 23. The agency states that it received eight timely bids at the designated location--but did not receive a bid from Goins. Contracting Officer's Statement (COS) at 2. The agency also notes that, although both virtual and in-person attendance were permitted, Goins did not attend the bid opening either in person or virtually.⁴ *Id.*

On June 12, the agency posted a bid abstract on the SAM.gov website, listing the eight bids it received. On June 13, Goins emailed the agency, alleging that it had submitted a bid that was lower than those listed, and maintaining that it should have been awarded the contract. In response, the agency advised Goins that it had not received its bid. Thereafter, Goins provided a USPS tracking document indicating that a package from Goins was delivered on May 21 "In/At Mailbox" in "Columbus, Ohio," without providing any more specific address.⁵ However, the tracking document also states: "Your item was returned to the sender on May 21, 2024 . . . because of an incorrect address."⁶ Protest at 27.

² Although the IFB initially stated that bid opening would occur at a location in Kettering, Ohio, the agency amended the solicitation on May 13 to change the bid opening location to the Columbus address. AR, Tab 3b, IFB amend. 2 at 1.

³ The SAM.gov website is the current governmentwide point of entry, which serves as "the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public." Federal Acquisition Regulation 2.101.

⁴ Specifically, the agency states that "Four of the eight bidders attended the bid opening at the NCO 10 Columbus office, while the remaining bidders attended the virtual bid opening held via Teams." COS at 1-2.

⁵ Consistent with this, Goins submitted a statement from a USPS employee in Nixa, Missouri, stating that the package "was GPS'ed" to the Columbus address. Protest at 26.

⁶ Consistent with this, the USPS tracking documentation contains a May 21 "alert" entry stating: "No Such Number." AR, Tab 2, USPS Tracking Document at 2.

Subsequent USPS tracking documentation further shows that, on June 16 (three days after the agency advised Goins it had not received its bid) the tracked package was received at the USPS's regional facility in Detroit Michigan and that, on June 28 (more than a month after bid opening), the package was "Delivered, [to] Front Desk/Reception/Mail Room" in Columbus, Ohio. AR, Tab 2, USPS Tracking Document at 1. Consistent with the tracking documentation, the agency states that it "received notification from the VA Columbus Community Nursing Group, located in the same suite with NCO 10, that they received a bid package that was delivered to Suite 340 on [June 28]." COS at 3. The agency adds that "[t]here was no date/time stamp or any proof of prior delivery/receipts on the bid envelope received on June 28." *Id.*

Following various communications between Goins and the agency, the agency concluded that there was insufficient evidence to accept Goins's assertion that its proposal had been timely submitted to, and received by the agency at, the designated bid opening location; accordingly, the agency concluded the bid could not be accepted. *Id.* at 3-4. Goins filed this protest on June 25.⁷

DECISION

Goins asserts that it transmitted its bid to the USPS on May 20 (three days before the May 23 closing date), maintaining that it was properly addressed to the VA bid opening site, and maintains that some "unknown staff member" at the VA improperly returned the package. Protest at 2. Accordingly, Goins maintains that its bid was under the control of the federal government from May 20 to the closing date and, therefore, should not be considered late. *Id.* Additionally, Goins asserts that it was "unaware" that virtual attendance at the bid opening was permitted, despite the fact that the agency posted a special notice regarding this matter (along with specific call-in information) on SAM.gov. *Id.*

The agency responds it has no record of having received Goin's bid; denies that the bid was under the government's control prior to the time set for receipt of bids; and, therefore, maintains that the bid that was delivered more than a month after bid opening could not be accepted. COS at 2-4.

Moreover, the agency maintains that Goins failed to diligently pursue the information on which its protest is based. Specifically, the agency notes that, had Goins attended the May 23 bid opening, "it would have known as soon as bids had been opened and read aloud that its bid had not been received." Memorandum of Law at 7-8. Accordingly, the agency maintains that, because Goins's June 25 protest was filed more than a month after Goins knew or should have known the basis for its protest allegations, the protest should be dismissed as untimely filed. We agree.

⁷ The protest was submitted after 5:30 p.m. on June 24, 2024; accordingly, it was not filed until June 25. See 4 C.F.R. 21.0(g).

Our Bid Protest Regulations contain strict rules for the timely submission of protests; these timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *Verizon Bus. Network Servs., Inc.*, B-419271.5, *et al.*, Apr. 26, 2021, 2021 CPD ¶ 191 at 14. Under these rules, a protest challenging the agency's rejection of a bid or proposal must be filed within 10 calendar days after the protester knew *or should have known its basis for protest*. 4 C.F.R. § 21.2(a)(2) (emphasis added). In this context, a protester has an affirmative obligation to diligently pursue information that may provide a basis for protest and a protester's failure to utilize the most expeditious information-gathering approach constitutes a failure to meet this obligation. *Bannum, Inc.*, B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 5. More specifically, we have explained that failure to attend a public bid opening, which would have revealed the information on which a protest is based, constitutes failure to diligently pursue relevant information. *GC Works, Inc.*, B-416379, B-416379.2, Aug. 14, 2018, 2018 CPD ¶ 286 at 3; *Thomas May Construction Co.*, B-255683, Mar. 23, 1994, 94-1 CPD ¶ 210. Finally, publication on SAM.gov constitutes constructive notice of contracting actions which cannot be rebutted. *Prudential Protective Servs., LLC*, B-418869, Aug. 13, 2020, 2020 CPD ¶ 272 at 3; *Boswell & Dunlap, LLP*, B-416623, Oct. 10, 2018, 2018 CPD ¶ 351 at 3. In this regard, the doctrine of constructive notice imputes knowledge to a party without assessing the veracity of the party's assertions regarding its actual knowledge. *Prudential Protective Servs., LLC*, *supra*.

Here, since the agency expressly notified bidders that virtual attendance was permitted by posting a special notice on SAM.gov, Goin's assertion that it was "unaware" of that notice will not be considered. Further, there is no dispute that, had Goins attended the May 23 public bid opening, it would have learned the basis for its protest allegations. Finally, Goins's protest was not filed until more than a month after the bid opening date--when it could have learned of its basis for protest. On this record, we conclude that Goins failed to diligently pursue the information on which its protest is based and, accordingly, that its protest was not timely filed.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel