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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Latvian Connection, LLC

File: B-412701

Date: April 22, 2016

Keven L. Barnes, Latvian Connection, LLC, for the protester.
Heather M. Mandelkehr, Esq., Department of the Air Force, for the agency.
Young S. Lee, Esq., and Noah B. Bleicher, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that procurement should be set aside for service-disabled veteran-owned small businesses is denied where agency's market research established that there are not two small businesses capable of manufacturing the products sought.

DECISION

Latvian Connection, LLC, a service-disabled veteran-owned small business (SDVOSB) concern of Kuwait City, Kuwait, challenges the terms of request for proposals (RFP) No. FA8601-16-R-0016 (RFP-0016), issued by the Department of the Air Force for fitness equipment.¹ Latvian alleges that the solicitation should have been set aside for small businesses or SDVOSBs.

We deny the protest.

BACKGROUND

On December 29, 2015, the Air Force posted RFP-0016 on the Federal Business Opportunities (FedBizOpps) website using the commercial item procedures of Federal Acquisition Regulation (FAR) Part 12 and the simplified acquisition

¹ The combined synopsis/solicitation requests that offerors submit proposals, but also contains language contemplating that quotations will be submitted. RFP-0016 at 1, 3. For the purposes of this decision, we refer to the solicitation as a request for proposals rather than a request for quotations.

procedures of FAR Part 13. RFP-0016 at 1. The solicitation, which was issued on an unrestricted basis, contemplates the award of a fixed-price contract to provide various types of fitness equipment for both the Dodge and Jarvis gyms located on Wright-Patterson Air Force Base in Ohio. Id. at 1, 4. The solicitation states that award will be made to the responsible offeror submitting a proposal that conforms to the requirements of the solicitation, is evaluated as being technically acceptable, and submits the lowest price. Id. at 1.

Several months before issuing RFP-0016, the Air Force attempted to fulfill the fitness equipment requirement for each gym separately under two independent solicitations. Contracting Officer (CO) Statement of Facts at 3. The other two solicitations were both posted to FedBizOpps on June 25 and were identified by RFP Nos. FA8601-15-T-0189 (RFP-0189) and FA8601-15-R-0057 (RFP-0057).² The agency did not set aside the RFPs for small businesses or SDVOSBs because market research indicated that there was no expectation that at least two small businesses would submit offers.³ Id. The market research performed by the agency consisted of online research in addition to posting a sources sought synopsis to FedBizOpps on June 3, and evaluating the responses that were received.⁴ Agency Report (AR), Tab 4, Jarvis Gym Equipment Sources Sought, at 1; Tab 5(b), Jarvis Gym Market Research Memorandum, at 1. Of the offers received in response to RFP-0057 and RFP-0189, only two were from small businesses, and only one of those proposals was from a fitness equipment manufacturer.⁵ CO Statement of Facts at 4; AR, Tab 10(b), Dodge and Jarvis Gym

² RFP-0189 was for the fitness gym requirements at the Dodge gym. RFP-0189 at 1. RFP-0057 was for the fitness gym requirements at the Jarvis gym. RFP-0057 at 1.

³ Latvian filed pre-award protests challenging the terms of RFP-0189 and RFP-0057, arguing that the solicitations should have been set aside for small businesses. See Latvian Connection, LLC, B-411868, B-411869, Sept. 9, 2015, at 1 (unpublished decision). In response, the Air Force argued that Latvian did not have the capability to provide the gym equipment sought under the solicitations and, therefore, was not an interested party to pursue its protest. Id. at 2. Our Office agreed with the agency and dismissed the protests after Latvian failed to establish it was an interested party. Id. at 2. Here, Latvian maintains it is an interested party to pursue this protest because it has identified a teaming partner with the capability to provide the gym equipment being acquired.

⁴ The agency issued one sources sought synopsis, using the fitness equipment specifications for the Jarvis gym, because both the Jarvis and Dodge gyms required the same type of fitness equipment, only in differing quantities. CO Statement of Facts at 2; AR, Tab 4, Jarvis Gym Equipment Sources Sought, at 1.

⁵ Latvian did not submit a proposal in response to RFP-0057 or RFP-0189. CO Statement of Facts at 4.

Market Research Memorandum, at 1. The agency subsequently cancelled both solicitations because none of the offers was evaluated as being technically acceptable. CO Statement of Facts at 4.

After the cancellations, the agency re-evaluated its requirements and then issued RFP-0016. CO Statement of Facts at 4. Upon re-evaluation, the Air Force combined the fitness equipment requirements of the two cancelled RFPs, included a change to the suggested manufacturer of the equipment, and changed equipment types and quantities. *Id.* at 4-5. The closing date for the receipt of proposals was February 3, 2016.⁶ RFP-0016, Amend. 004, at 1. Latvian filed its protest with our Office on February 2.

DISCUSSION

Latvian primarily argues that the solicitation should be set aside for small businesses or SDVOSBs because, in its view, there are two or more small businesses and SDVOSBs capable of fulfilling the requirement.⁷ The protester also contends that if the Air Force performed adequate market research, it would have identified small businesses that can perform the requirement.⁸

In response, the agency explains that it did not set aside the procurement for small businesses or SDVOSBs because, based on the information gathered during its market research, the Air Force did not have a reasonable expectation that offers

⁶ The agency represents that it received eight proposals in response to RFP-0016; again, Latvian did not submit a proposal. CO Statement of Facts at 5-6.

⁷ Latvian also raises other collateral issues. Although we have reviewed all of the protester's arguments, we find no basis to sustain the protest. For example, the protester also alleges that as a SDVOSB concern, it should have received a sole-source award based on its interpretation of the authority found at FAR § 19.1406(a) and its interpretation of our Office's prior decision in MCS Portable Restroom Serv., B-299291, Mar. 28, 2007, 2007 CPD ¶ 55. We disagree. In this regard, FAR § 19.1406(a) and MCS Portable Restroom Serv., simply require that under certain circumstances, contracting officers must consider whether it might be appropriate to direct a sole-source award to a SDVOSB concern. See FAR § 19.1406(a); See MCS Portable Restroom Serv., *supra*, at 8. Thus, under the circumstances here, the Air Force was not required to award Latvian a sole-source contract, notwithstanding the protester's assertion otherwise.

⁸ To advance its position, the protester provides an e-mail sent by its teaming partner to the Air Force, merely identifying the names of various fitness equipment manufacturers. Comments at 6. We note that the e-mail does not indicate whether these fitness equipment manufacturers are small businesses or interested in this procurement.

would be received from two or more small business concerns that manufactured fitness equipment, or would source the equipment from a small business manufacturer.⁹

An acquisition for the type of goods and services sought here, with an anticipated dollar value of more than \$150,000, must be set aside for small business concerns if the agency determines there is a reasonable expectation that offers will be submitted by two or more small businesses that are offering products manufactured by small business concerns. FAR §§ 19.502-2(b), (c). In this regard, our Office will review a protest of an agency determination not to set aside a procurement to determine whether a contracting officer has undertaken reasonable efforts to ascertain the availability of capable small businesses. Manus Medical LLC, B-412331, Jan. 21, 2016, 2016 CPD ¶ 49 at 3.

Here, our review of the record confirms that the agency conducted adequate and meaningful market research to determine whether there was a reasonable expectation that two or more small businesses possessed the capability to manufacture the products sought. See AR, Tab 4, Jarvis Gym Equipment Sources Sought, at 1; Tab 5(b), Jarvis Gym Market Research Memorandum, at 1; Tab 10(b), Dodge and Jarvis Gym Market Research Memorandum, at 1. The Air Force's market research consisted of online internet searches and was based on information received in response to the agency's June 3 sources sought synopsis. AR, Tab 10(b), Dodge and Jarvis Gym Market Research Memorandum, at 1. Only three small businesses responded to the sources sought synopsis, and only one of those respondents was a SDVOSB. AR, Tab 5(b), Jarvis Gym Market Research Memorandum, at 1. None of the respondents were small business manufacturers of fitness equipment. Id.

The agency's market research also took into consideration information from proposals received in response to RFP-0189 and RFP-0057. AR, Tab 10(b), Dodge

⁹ Latvian argues in the alternative that even if the Air Force is correct, and there are not two small business manufacturers of fitness equipment capable of meeting this requirement, the agency should seek a waiver to the Small Business Administration's longstanding rule, which requires non-manufacturers to supply products made in the United States by other small business concerns; commonly referred to as the non-manufacturer rule. This argument is unpersuasive because the FAR provides that, in a specific solicitation, a contracting officer "may request a waiver" of the requirement that products acquired under small business set-asides be manufactured by small businesses. FAR § 19.102(f)(5). However, this provision is discretionary, and nothing in the protest record provides a basis for our Office to conclude that the agency's decision not to seek a waiver of the manufacturing requirements was improper or otherwise unreasonable. Accordingly, we deny Latvian's alternative protest argument.

and Jarvis Gym Market Research Memorandum, at 1. Only two small businesses submitted proposals in response to the cancelled solicitations, and only one was a manufacturer of fitness equipment. Id. Additionally, the agency represents that it conducted a search of the Small Business Administration's Dynamic Small Business Search website. Legal Memorandum at 3.

Based on all this information, the CO concluded that there was not a reasonable expectation that proposals would be submitted by two or more small business manufacturers, or small businesses offering products manufactured by small business concerns. On this record, we find no merit to the protester's allegation that the solicitation should have been set aside for small businesses or SDVOSBs.

The protest is denied.

Susan A. Poling
General Counsel