



Decision

Matter of: MICCI Imaging Construction Company, Inc.

File: B-405654

Date: November 28, 2011

James E. Krause, Esq., for the protester.
Rebecca L. Tranthem, Esq., Department of Veterans Affairs, for the agency.
Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

In a Department of Veterans Affairs (VA) procurement that was set aside for service-disabled, veteran-owned small business concerns, the protester is not an interested party to maintain its protest where the VA denied the protester's application for inclusion in VA's VetBiz Vendor Information Pages database, notwithstanding the firm's pending request to the VA for reconsideration.

DECISION

MICCI Imaging Construction Company, Inc., of Gainesville, Florida, protests the award of a contract to Seawolf Construction Corporation, of Jersey City, New Jersey, under request for proposals (RFP) No. VA248-11-RP-0201 issued by the Department of Veterans Affairs (VA) for phase II of a parking garage expansion. MICCI argues that the VA improperly rejected its proposal because it was not listed in the VA's database of veteran-owned small business concerns.

We dismiss the protest.

BACKGROUND

The Veterans Benefits, Health Care, and Information Technology Act of 2006, Pub. Law No. 109-461, provides the VA with independent authority to restrict competition to service-disabled, veteran-owned small business (SDVOSB) concerns under certain circumstances. 38 U.S.C. § 8127(d). In this regard, 38 U.S.C. § 8127(e) states that a small business concern may be awarded a contract only if the small business concern and the veteran owner of the small business concern are listed in a database of veteran-owned small business (VOSB) concerns, which the Act requires the

Secretary of Veterans Affairs to maintain. The Secretary is required to verify that each small business concern listed in the database is owned and controlled by veterans, and where a service-connected disability is indicated, to verify the service-disabled status of the veteran. 38 U.S.C. § 8127(f). The VA has designated the Vendor Information Pages (VIP) as the database of businesses approved to participate in VA's veteran-owned small business program, and www.VetBiz.gov (VetBiz) as the Web portal that hosts the VIP. See 38 C.F.R. § 74.1. The VA's Center for Veterans Enterprise (CVE) is responsible for reviewing applications and verifying the status of VOSB and SDVOSB concerns for inclusion in the VIP database. Id. § 74.11.

With regard to the procurement at issue, the RFP was issued as a set-aside for SDVOSB concerns for the award of a fixed-price contract for phase II of a parking garage expansion at the VA Medical Center in Gainesville, Florida. Offerors were informed that award would be made on a lowest-priced, technically acceptable basis, considering technical approach and past performance. RFP at 1, 10.

The RFP advised offerors that they must be verified in VetBiz prior to award in accordance with a class deviation to VA Acquisition Regulation (VAAR) § 804.1102. RFP at 1. The class deviation provided in relevant part that "the apparently successful offeror, unless currently listed as verified in the Vendor Information Pages (VIP) . . . shall submit to [the CVE] within five business days of receipt of written notice of its status as the apparently successful offeror, a verification application . . ." that would be given an expedited review. Id. at 23.

The VA received proposals from nine offerors, including MICCI and Seawolf. The VA found MICCI ineligible for award because it was not listed in the VIP database and selected Seawolf for award. Protest, exhib. A, Notice of Non-Selection. Following a written debriefing, MICCI protested to our Office.

DISCUSSION

MICCI argues that because it offered a lower price than Seawolf, the VA was required under the class deviation to VAAR § 804.1102 to notify MICCI of its status as the apparently successful offeror and expedite the CVE's review of MICCI's application to be verified and listed in the VIP database as an SDVOSB concern.¹

The VA argues that MICCI is not an interested party to pursue this protest because on September 28, 2011, the CVE denied MICCI's application for inclusion in the VIP database. Agency Report, Tab 4, CVE Letter to MICCI, Sept. 28, 2011, at 1.

¹ MICCI had submitted its application to the CVE for verification two days before submitting its proposal under this solicitation. Protest at 4.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2006), only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2011). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party’s status in relation to the procurement. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id. Here, MICCI would not be in line for award even if we were to sustain the protest because the CVE has denied its application for inclusion in the VIP database as an SDVOSB concern.

MICCI contends that the CVE erred in rejecting MICCI’s application, and that the protester remains an interested party because it has filed a request for reconsideration with the CVE and is awaiting the CVE’s decision. Comments at 4. Although MICCI has filed a request for reconsideration, the determination that MICCI is not an eligible SDVOSB concern remains in effect, and thus provides no basis for us to consider the agency’s actions.² See A1 Procurement, LLC, B-405535, Nov. 18, 2011; see also S.A. Saber, B-249874, Dec. 10, 1992, 92-2 CPD ¶ 403 (holding that small business concern, which had been determined to be other than small by the Small Business Administration (SBA), was not an interested party to challenge award of a small business set-aside contract, notwithstanding a pending appeal with SBA).

The protest is dismissed.³

Lynn H. Gibson
General Counsel

² Even if MICCI had not filed a request for reconsideration with the CVE, the VA’s regulations provide for a 6-month waiting period before a firm can resubmit an application for inclusion in the VIP database. See 38 C.F.R. § 74.14.

³ To the extent that MICCI is protesting to our Office the CVE’s decision to reject MICCI’s application, this issue is not within our jurisdiction. The VA has sole jurisdiction to consider this issue. See VAAR § 818.307(c); A1 Procurement, JVG, B-404618.3, July 26, 2011, 2011 CPD ¶ 140 at 4.