



Decision

Matter of: Crosstown Courier Service, Inc.

File: B-405492, B-405493

Date: November 8, 2011

Christopher J. Noyes, Crosstown Courier Service, Inc., for the protester.
Harold W. Askins III, Esq., Department of Veterans Affairs, for the agency.
Noah B. Bleicher, Esq. and Sharon L. Larkin, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protests of sole-source awards to a service-disabled veteran-owned small business by the Department of Veterans Affairs are denied where the awards were properly made under the authority of the Veterans First Contracting Program.

DECISION

Crosstown Courier Service, Inc. (Crosstown), of Springfield, Massachusetts, a service-disabled veteran-owned small business (SDVOSB) protests the Department of Veterans Affairs' (VA) decision to award two sole-source contracts for courier services to Florida Courier Express, LLC (FCX), of Orlando, Florida, under solicitation Nos. VA-247-11-RP-0345 and VA-247-11-RP-0346.

We deny the protests.

BACKGROUND

On August 1, the VA awarded FCX, an SDVOSB, two fixed-price requirements contracts for courier services on a sole-source basis. Contracting Officer's Statement (B-405492) at 1; Contracting Officer's Statement (B-405493) at 1. One contract, issued under solicitation No. VA-247-11-RP-0345, was for courier services to transport various items from nine community-based outpatient clinics to the VA

Medical Center in Birmingham, Alabama.¹ Contracting Officer's Statement (B-405492) at 1. This contract had a 1-year base period and one 1-year option to extend services, and a price of \$171,709.20 for the first year and a total of \$346,853 for the life of the contract. Id. at 2. The other contract, issued under solicitation No. VA-247-11-RP-0346, was for courier services to transport various items from the Aiken, South Carolina, community-based outpatient clinic to the VA Medical Center in Augusta, Georgia. Contracting Officer's Statement (B-405493) at 1. This contract had a 1-year base period and two 1-year options, and a price of \$18,757.96 for the first year and a total of \$57,974.29 for the life of the contract. Id. at 2.

Prior to the awards, the agency executed a justification and approval for each contract, citing the authority in Federal Acquisition Regulation § 6.302-5--authorized or required by statute--as the basis for the sole source awards. Agency Report (AR) (B-405492), exh. 8, Award Justification and Approval, at 3; AR (B-405493), exh. 8, Award Justification and Approval, at 3. According to the justification and approval documents, the VA made both sole-source awards pursuant to its statutory authority under the Veterans First Contracting Program.² AR (B-405492), exh. 8, Award Justification and Approval, at 4; AR (B-405493), exh. 8, Award Justification and Approval, at 4; see 38 U.S.C. § 8127 (2006 & Supp. 2011).

On August 5, Crosstown, an SDVOSB that provides courier services, protested to our Office the VA's decision to enter into the contracts with FCX on a sole-source basis without considering other SDVOSBs for award.

DISCUSSION

The protester contends that the sole-source awards are improper because the VA failed to consider other qualified SDVOSBs for award. Protest (B-405492) at 1; Protest (B-405493) at 1. The protester argues that the VA should have set aside these procurements for SDVOSBs--and not have awarded sole-source contracts--because two or more SDVOSBs would have submitted offers for the work. Protest (B-405492) at 1; Protest (B-405493) at 1; Comments at 1.

¹ The nine community-based outpatient clinics, all located in Alabama, include: Anniston/Oxford, Bessemer, Childersburg, Gadsden, Guntersville, Huntsville, Madison/Decatur, Muscle Shoals, and Jasper. RFP -0345 at 6-8.

² The Veterans First Contracting Program, administered by the VA, was created by the Veterans Benefits, Health Care, and Information Technology Act of 2006. Pub. L. No. 109-461, § 502; see 38 U.S.C. § 8127. One of the goals of the Veterans First Contracting Program is to increase contracting opportunities for veteran-owned small businesses and SDVOSBs. 38 U.S.C. § 8127(a).

Under the Veterans First Contracting Program, the VA has authority to award contracts using other than full and open competition (including set-aside procurements and sole-source awards) in certain circumstances. See 38 U.S.C. § 8127. With regard to setting aside procurements exclusively for veteran-owned small businesses (VOSBs) or SDVOSBs, 38 U.S.C. § 8127(d) states:

Except as provided in subsections (b) and (c), . . . a contracting officer of the [VA] shall award contracts on the basis of competition restricted to [VOSBs or SDVOSBs] if the contracting officer has a reasonable expectation that two or more [VOSBs or SDVOSBs] will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.”

38 U.S.C. § 8127(d) (emphasis added); see Buy Rite Transport, B-403729, B-403768, Oct. 15, 2010, 2010 CPD ¶ 245 at 3.

Subsection (c), referred to in the above provision, provides the VA with authority to award sole-source contracts to SDVOSBs when:

- (1) such concern is determined to be a responsible source with respect to performance of such contract opportunity;
- (2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold^[1] . . . but will not exceed \$5,000,000; and
- (3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

38 U.S.C. § 8127(c); see Apex Ltd., Inc., B-402163, Jan. 21, 2010, 2010 CPD ¶ 35 at 2; In & Out Valet Co., B-311141, April 3, 2008, 2008 CPD ¶ 71 at 3.

Subsection (b) provides that, for contracts with SDVOSBs for amounts less than the simplified acquisition threshold, the VA is also authorized to use noncompetitive procedures. 38 U.S.C. § 8127(b).

Here, the VA awarded the sole-source contracts to FCX pursuant to its authority under the Veterans First Contracting Program. The protester’s assertion that the VA should have set aside the procurements for SDVOSBs is without merit because the requirement to set aside certain procurements only applies when the VA does not

^[1] The simplified acquisition threshold is \$100,000. 41 U.S.C. § 134.

use its sole-source authority under the Veterans First Contracting Program. As emphasized above, the VA is required to set aside certain procurements “[e]xcept as provided in subsections (b) and (c)” 38 U.S.C. § 8127(d). Subsections (b) and (c) are the VA’s authority under the Veterans First Contracting Program to award sole-source contracts to SDVOSBs. See 38 U.S.C. §§ 8127(b) and (c). Therefore, because the VA used the authority provided in 8127(b) and 8127(c) to award sole-source contracts to FCX, the VA was not required to set aside for SDVOSBs these procurements.³

The record here shows that the agency’s decision to award these sole-source contracts to FCX was in accord with the statute authorizing the award of sole-source contracts to SDVOSBs. See Apex Ltd., Inc., supra. Accordingly, we find no basis to sustain the protests.

The protests are denied.

Lynn H. Gibson
General Counsel

³ For the first time in its comments on the agency’s reports, Crosstown questions FCX’s ability to perform under the contracts “with only 5 employees.” Comments at 1. The question of whether a company is capable of performing the contract is a matter of responsibility, which we generally will not consider. 4 C.F.R. § 21.5(c) (2011); see Eggs & Bacon, Inc., B-402591.2, Aug. 13, 2010, 2010 CPD ¶ 193 at 5. Furthermore, this protest ground may also be untimely as the protester has not presented any information to explain why the allegation was not raised in its initial protests and the allegation does not appear to be based on anything in the agency’s reports. See 4 C.F.R. § 21.2(a)(2) (protests of other than solicitation improprieties are untimely if not filed within 10 days of when the basis of protest is known or should have been known).