



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Ironclad Services, Inc.

File: B-406037

Date: January 11, 2012

Matthew R. Curnutte for the protester.

Jeanne S. Morris, 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

1. Protest that the Department of Veterans Affairs is required to expedite its review of an apparent successful offeror's application for status verification as a service-disabled, veteran-owned small business concern is denied, where the solicitation did not provide for such an expedited process.

2. In a task order procurement that was set aside for service-disabled, veteran-owned small business concerns, the procuring agency may properly require a firm to demonstrate that it remains a verified service-disabled, veteran-owned small business concern.

DECISION

Ironclad Services, Inc., of Springfield, Massachusetts, protests the issuance of a task order to Legion Construction, Inc., of Chelmsford, Massachusetts, under task order request for proposals (RFP) No. VA-241-11-RP-1404, issued by the Department of Veterans Affairs (VA) for the installation or replacement of water and steam system shutoff valves.

We deny 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.

In September 2010, the VA's Deputy Senior Procurement Executive issued a class deviation to VA Acquisition Regulation (VAAR) § 804.1102, which provided that "[t]he apparently successful offeror, unless currently listed as verified in the [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 in accordance with 38 [C.F.R.] Part 74." Class Deviation from VAAR § 804.1102, Vendor Information Pages Database. The provision also advised offerors that the CVE would examine the application, and within 21 business days determine whether the firm could be verified as an SDVOSB concern. Contracting officers were instructed to include the VAAR § 804.1102 deviation in all solicitations issued beginning October 1, 2010.¹ Id.

With regard to the procurement at issue, the RFP was issued on September 15, 2011 to nine SDVOSB holders of multiple award task order contracts (MATOC), including Ironclad.² Contracting Officer's (CO) Statement at 1. The RFP provided for the issuance of a task order for the installation or replacement of water and steam system shutoff valves at the VA Boston Healthcare System, West Roxbury Campus. RFP at 1. The RFP informed offerors that the task order would be issued to the lowest-priced offeror. Work was to be completed within 120 days of receipt of a notice to proceed. Id. As relevant here, neither the task order RFP nor the underlying MATOC included the deviation to VAAR § 804.1102.

In August 2011, Ironclad submitted a verification application to renew its inclusion in the VIP database as an SDVOSB concern. Ironclad Letter, Dec. 5, 2011. The VetBiz

¹ The deviation expired on December 31, 2011, the effective date of the requirement that all VOSB and SDVOSB concerns listed in the VIP database must be verified. See id.

² Ironclad was awarded a MATOC in August 2009; at that time, Ironclad was listed in the VIP database. Comments at 2.

web site includes a web page that provides applicants information concerning the status of their verification applications. For example, on September 12, three days before the RFP was issued, the status web page indicated that Ironclad's application was undergoing the initial examination of the application and supporting documents. On October 12, the status page indicated that Ironclad's application was undergoing the final phase, under which the CVE issues an eligibility determination.³ Protest, Tabs 7 & 8, VetBiz Verification Process.

The VA received offers from four MATOC holders. Ironclad offered the lowest price. However, Ironclad was found to be ineligible for award because it was not listed in the VIP database, and the VA issued the task order to Legion Construction on September 29, 2011. CO's Statement at 1; Agency Report, Tab 4, Task Order. On October 19, Ironclad protested to our Office.

DISCUSSION

Ironclad argues that its application for inclusion in the VIP database as an SDVOSB should have received expedited review in accordance with the deviation to VAAR § 804.1102. Ironclad claims it is entitled to expedited review under the deviation because it was the apparent low bidder and was listed on the VetBiz web site prior to award. Protest at 2. Ironclad acknowledges that this deviation was not included in the task order RFP, but nonetheless argues that the deviation applies to the subject procurement.⁴ Comments at 2. We disagree.

Because the deviation was not included in the solicitation, the deviation does not apply to the procurement at issue, and Ironclad is not eligible for any expedited review provided for by the deviation. See e.g., Marine Group Boat Works, LLC, B-404277, B-404277.2, Jan. 19, 2011, 2011 CPD ¶ 23 at 4 (agency not required to evaluate option prices where solicitation did not include relevant regulatory provisions); Goel Servs., Inc., B-310822.2, May 23, 2008, 2008 CPD ¶ 99 at 2 (agency properly did not apply HUBZone price preference where solicitation did not include the required preference); Parsons Precision Prods., Inc., B-249940, Dec. 22, 1992, 92-1 CPD ¶ 431 at 6 (Prompt Payment Act provisions did not apply where clause was omitted from solicitation).

To the extent that Ironclad complains that the VAAR § 804.1102 deviation should have been in the task order RFP, Ironclad's complaint is untimely. Under our Bid Protest Regulations, a protest of alleged improprieties in a solicitation that are

³ Ironclad was notified on November 14 that its application for inclusion in the VIP database as an SDVOSB concern had been approved. Ironclad Letter, Nov. 15, 2011.

⁴ The solicitation for the underlying MATOC predates the issuance of the VAAR § 804.1102 deviation.

apparent prior to the closing time for receipt of initial proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1) (2011).

Ironclad also argues that it was in fact listed on the VetBiz web site and was therefore eligible for award. We disagree. The VetBiz web page on which Ironclad relies does not indicate that the firm has been listed in the VIP database, but rather merely informs companies of the status of the CVE's review of their verification applications. As such, it does not meet the statutory requirement for listing in the VIP database.

Ironclad alternatively argues that verification of its status as an SDVOSB concern is not required as it was awarded the underlying MATOC as part of an SDVOSB set-aside. Comments at 2. The underlying purpose of the verification requirement was to ensure that only SDVOSB and VOSB concerns were awarded specific contracts. See 38 U.S.C. § 8127(e). To implement this requirement, the VA requires SDVOSB concerns to resubmit a verification application annually. See 38 C.F.R. § 74.15(a). We find that the VA's requirement for MATOC holders to demonstrate that they continue to meet the statutory requirement of being verified SDVOSB concerns is consistent with the statute and reasonable. See e.g., Enterprise Info. Servs., Inc., B-403028, Sept. 10, 2010, 2010 CPD ¶ 213 at 3.

The protest is denied.

Lynn H. Gibson
General Counsel