



Decision

Matter of: Esterhill Boat Service Corporation

File: B-418356; B-418356.2

Date: March 20, 2020

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DIGEST

Protest that solicitation for leasing medical office space unduly restricts competition is denied where the agency demonstrates a reasonable basis for requiring contiguous space on one floor.

DECISION

Esterhill Boat Service Corporation (Esterhill), a service-disabled veteran-owned small business (SDVOSB), of Franconia, New Hampshire, protests the terms of request for lease proposals (RLP) No. 36C24119R0099, issued by the Department of Veterans Affairs (VA), to lease medical office space for a community-based outpatient clinic (CBOC). The protester contends that the RLP's specifications exceed the agency's minimum needs and unduly restrict competition. The protester also argues that the lease competition should have been reserved for SDVOSBs or veteran-owned small businesses (VOSBs).

We deny the protest.

BACKGROUND

The VA issued the RLP on November 15, 2019, for between 7,184 and 7,200 usable square feet of contiguous space, on one floor, ground-level preferred, within the town of Rumford, Maine.¹ Agency Report (AR), Tab 2, Contracting Officer's Statement (COS),

¹ The solicitation was amended once, to extend the time for receipt of proposals through January 6, 2020. AR, Tab 18, RLP Amend. 1, at 1.

at 1; AR, Tab 17, RLP § 1.02. The RLP contemplates the award of a lease for 10 years (5 base years plus five 1-year option terms) based on the lowest-priced, technically acceptable offer submitted. RLP §§ 1.02; 4.03.

Prior to issuing the solicitation, the VA conducted market research to determine whether it was reasonable to expect two or more VOSBs or SDVOSBs to submit offers. The Veterans Benefits, Health Care, and Information Technology Act of 2006, 38 U.S.C. §§ 8127-8128, requires the VA to set aside procurements for VOSBs or SDVOSBs, whenever it determines that there is a reasonable expectation that two or more offers will be received from VOSB or SDVOSB firms and that award can be made at a fair and reasonable price. 38 U.S.C. § 8127(d). This has been referred to as the VA “rule of two.”

The VA issued a sources sought notice on May 26, 2019, on www.fbo.gov for 9,700 to 9,800 contiguous square feet, in Rumford, with responses due by June 10. COS at 1; AR, Tab 16, Sources Sought Notice, at 1. The VA also published the sources sought notice in two local newspapers. AR, Tab 20, at 3.² In addition, the contracting officer searched LoopNet, a website listing available commercial real estate, for properties meeting the VA’s requirements. AR, Tab 27, Suppl. COS, at 1, 3. Multiple firms submitted responses, including two SDVOSBs, one of which was the protester, the incumbent lessor. See COS at 1; Suppl. COS at 1, 3.

After reviewing the SDVOSB responses to the sources sought notice, the contracting officer was not confident that setting the solicitation aside for VOSBs or SDVOSBs would provide adequate competition. Suppl. COS at 2. In its submission in response to the notice, Esterhill did not identify its available square footage and informed the VA that the intended space would occupy two floors, similar to the current leased space. Agency Suppl. Briefing Feb. 10, 2020 at 3; see Protest exh. 27; AR, Tab 28. Therefore, the contracting officer had low confidence in Esterhill’s ability to meet the VA’s basic requirement that the space be contiguous on one floor, and concluded that Esterhill was unlikely to meet the requirement. Suppl. COS at 2. The other SDVOSB indicated that it would provide “build to suit” construction for the CBOC. Id. Although the VA does not oppose new construction, the contracting officer noted that there is greater cost with “build to suit” space, and more risk with an unknown lessor. Id. Thus, the contracting officer determined that this SDVOSB presented a moderate risk of not meeting the requirement. Id. Consequently, the contracting officer decided the replacement lease would not be set aside for VOSBs or SDVOSBs. Id. at 3.

Esterhill filed this protest with our Office on December 17 before the deadline established for receipt of lease proposals.

² Documents in the AR were not numbered and so page numbers cited here refer to the unnumbered pages of the .pdf file unless otherwise noted.

DISCUSSION

The protester challenges the terms of the solicitation, arguing that the requirement that the Rumford CBOC space be located on one floor unduly restricts competition and is unnecessary to meet the agency's needs. Protest at 2, 7.³ Esterhill also alleges that the VA failed to conduct market research and follow the "rule of two" when determining whether to set aside this procurement for SDVOSBs and VOSBs. Suppl. Comments & Suppl. Protest app. A at 15-16.

The VA responds that the requirement is reasonable and does not restrict competition. AR, Memorandum of Law (MOL) at 2-8; COS at 2-7. In support of its argument, the VA contends that the requirement is directly related to the agency's newly developed Patient-Aligned Care Team (PACT) model for delivering healthcare services, and the guidance developed for designing space requirements and standards in support of the new system. MOL at 3. Based on our review of the record and the VA's justifications, we find the solicitation's space requirements are reasonably necessary to meet the needs of the VA for the Rumford CBOC.⁴

A contracting agency has the discretion to determine its needs and the best method to accommodate them. Vanguard Bldg. LP, B-414207, B-414207.2, Mar. 21, 2017, 2017 CPD ¶ 98 at 6. In preparing a solicitation, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy its legitimate needs. 41 U.S.C. §§ 3306(a)(1)(A), (a)(2); 1120 Vermont Ave. Assocs., LLP; 1125 15th St., LLC, B-413019, Aug. 1, 2016, 2016 CPD ¶ 191 at 5. Where a protester challenges a specification as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet the agency's needs. Vanguard Bldg. LP, supra. We examine whether the agency's explanation is reasonable; that is, whether the explanation can withstand logical scrutiny. Id. Moreover, the fact that a requirement may be burdensome or even impossible for a particular lessor to meet does not make it objectionable if the requirement properly reflects the agency's needs. 1120 Vermont Ave. Assocs. LLP, supra, at 7.

The VA explains that it invested substantial time and resources to develop the PACT model, which "is a patient-driven, team-based approach that allows patients to have a more active role in their health care" and is associated with greater patient satisfaction

³ Page numbers here refer to the numbered pages of Protest Appendix A, which is attached to the protest cover letter.

⁴ Although our decision does not specifically discuss each of the protester's arguments, we have fully considered each argument and find that none provides a basis to sustain the protest.

and lower costs. MOL at 3; see AR, Tab 7, Prototypes for Standardized Design and Construction: Community-Based Outpatient Clinics § 2.1. The record shows the VA issued guidance in 2014 requiring “all new leases and construction projects involving Primary Care and Mental Health [to be] designed according to [PACT] design standards” and, beginning in fiscal year 2014, requiring the redesign of any projects not designed for PACT compliance. See AR, Tab 3, at 1.

VA guidance explains that “[i]mplementation of PACT represents a practice change” and “a major cultural change from system-centered to patient-centered care.” AR, Tab 9, PACT Space Module Design Guide § 2.2. The legacy CBOC configurations segregated clinical services, which limited the smooth flow of veterans and staff and led to isolated clinics. Id. § 4.1. The PACT model, in contrast, places the veteran at the center of the care model and creates a streamlined circulation flow for patients and staff with shorter travel, improved privacy, and increased staff communication and care. Id. §§ 3.1; 4.1; 4.2.1. Under the PACT model, the veteran remains at one location when possible and the staff brings the services to the veteran; thus, the staff does most of the traveling to deliver patient care. See id. § 3.1.

Consistent with the above model, the VA developed three CBOC prototypes, with standard floor plans and equipment requirements, based on the volume of patients per year and the number of patient-focused teamlets.⁵ AR, Tab 7, Prototypes for Standardized Design and Construction: Community-Based Outpatient Clinics § 2.1. The One-PACT CBOC design is small, compact, and located on one floor; it services no more than 4,800 patients annually with 4 teamlets. COS at 4; see generally AR, Tab 7, Prototypes for Standardized Design and Construction: Community-Based Outpatient Clinics § 5.1. Historically, the Rumford CBOC has served 1,700 to 1,800 patients annually and this number is expected to remain static in the future. COS attach. 1 at 2; COS attach. 2 at 3. As a result, the VA requires the Rumford CBOC to use the One-PACT CBOC prototype. COS at 3. According to the contracting officer, there is no approved design for a two-story ONE-PACT CBOC. COS at 3-4; COS attach. 1 at 1.

Based on the agency’s explanation regarding the evolution of its approach for delivering health care services, we find the requirement that space for the Rumford CBOC be contiguous on one floor to be reasonable. Moreover, the market research and the responses to the sources sought notice demonstrate that contiguous, one floor lease space is available in the Rumford market, and that the requirement is thus not unduly restrictive of competition. Suppl. COS at 1; see also AR, Tab 21, Sources Sought Responses.

Esterhill, the incumbent lessor, challenges the agency’s rationale for its contiguous one floor requirement, on the basis that the VA has previously awarded leases in Maine, and

⁵ A “teamlet” is a four-member team that includes a primary care provider, a registered nurse care manager, a clinical associate, and an administrative associate. AR, Tab 7, Prototypes for Standardized Design and Construction: Community-Based Outpatient Clinics § 2.1.

is currently seeking space in other areas nationwide, that do not require all the leased space to be on one floor. Protest at 6; Comments & Suppl. Protest app. A at 6-7. Moreover, Esterhill claims that the RLP requirements are not legitimate because the current leased space is not exclusively on one floor. See Protest at 7; Comments & Suppl. Protest app. A at 9-11.

The configuration of the current lease or other leases throughout the nation has no bearing on the reasonableness of the agency's requirement for a new configuration for the Rumford CBOC lease. The VA's specifications have evolved to meet more modern requirements for a patient-centered paradigm where the veteran is at the center of healthcare delivery. Even though the VA has awarded leases for multi-floor clinics in Rumford and is soliciting lease space for multi-floor clinics in other regions, the contiguous one floor requirement is not objectionable where it properly reflects the agency's needs.

Esterhill also argues that the VA failed to conduct market research in accordance with the VA rule of two when determining whether to set aside this procurement for SDVOSBs. Comments & Suppl. Protest app. A at 15-16. Because we find that the agency's requirement pertaining to contiguous space on one floor is not unduly restrictive of competition, the protester is not an interested party to challenge the agency's action in this respect. 4 C.F.R. § 21.0(a)(1); BHB Ltd. P'ship & Ind. Assocs. Ltd. P'ship, B-417760 et al., Oct. 9, 2019, 2019 CPD ¶ 356 at 5. Esterhill does not contend that its proposed space can meet the requirement for between 7,184 and 7,200 net usable square feet of contiguous space on one floor and its response to the VA's sources sought notice does not propose contiguous space on one floor. See Protest exh. 27; AR, Tab 28. Accordingly, as Esterhill's building cannot meet the terms of the RLP with respect to the space requirements, it is not an interested party to challenge the agency's market research and set-aside determination.

The protest is denied.

Thomas H. Armstrong
General Counsel