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Decision

Matter of: CRAssociates, Inc.

File: B-419346

Date: January 21, 2021

Matthew R. Keller, Esq., Praemia Law, PLLC, for the protester.
Daniel J. McFeely, Esq., Department of Veterans Affairs, for the agency.
Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's decision to set aside the procurement for service-disabled veteran-owned small businesses is denied where the agency had a reasonable expectation that offers would be received from at least two such firms and that award would be made at a fair and reasonable price.

DECISION

CRAssociates, Inc. of Newington, Virginia, protests the terms of request for proposals (RFP) No. 36C26220R0128, issued by the Department of Veterans Affairs (VA), to provide medical services at a community-based outpatient clinic (CBOC) in Escondido, California. The protester challenges the agency's decision to set aside the procurement for service-disabled veteran-owned small businesses (SDVOSBs).

We deny the protest.

BACKGROUND

The RFP, issued as a total SDVOSB set-aside on June 29, 2020, contemplates the award of an indefinite-delivery, indefinite-quantity contract for a base period of one year and up to nine 1-year option periods. Agency Report (AR), exh.1, RFP at 3.¹ The successful contractor will provide CBOC services in support of the VA San Diego Healthcare System. *Id.* at 9. The solicitation requires services for an estimated 4,447 patients per month during the base year and increasing to an estimated 4,859 patients

¹ All citations to the record refer to the Bates number.

per month in the ninth option year. *Id.* at 7-8. The RFP was issued pursuant to Federal Acquisition Regulation (FAR) parts 12 and 15, and VA acquisition regulations. *Id.* at 9.

In January 2019, the contracting officer conducted market research and initially decided to solicit the procurement on an unrestricted basis, using full and open competition. Contracting Officer's Statement (COS) at 451. After conducting additional market research, the contracting officer noted that other VA contracting officers had set aside for SDVOSBs similar procurements for CBOC services. *Id.* The VA then posted a sources sought notice on beta.SAM.gov on November 5, 2019 and received five responses; four of the responding firms were SDVOSBs and one was a small business. *Id.* at 451-452. According to the agency, three of the four SDVOSBs had "direct experience being prime contractors providing CBOC services with VA PACT [patient aligned care team] model experience." *Id.*

After conducting additional market research between November 2019 and April 2020, the contracting officer decided a SDVOSB set-aside was appropriate. *Id.* On June 29, 2020, the VA posted the solicitation via beta.SAM.gov. *Id.* at 4. The VA received [DELETED] responses from SDVOSBs by the October 16 deadline. *Id.* CRAssociates filed this protest with our Office on October 16.

DISCUSSION

The protester, the incumbent here, challenges the agency's decision to set aside the procurement for SDVOSBs, arguing the VA cannot reasonably expect to receive proposals from two or more SDVOSBs at fair and reasonable prices. Protest at 3. Specifically, the protester alleges that no SDVOSB has the financial capability to perform the contract. *Id.* at 4-6. The protester further contends the solicitation is ambiguous and misleads offerors as it fails to reflect the agency's "actual needs." *Id.* at 7. For reasons discussed below, we deny the protest.²

The Veterans Benefits, Health Care, and Information Technology Act of 2006, 38 U.S.C. § 8127, and the VA's implementing regulations, 48 C.F.R. §§ 819.7004, 819.7005, require the VA to set aside procurements for SDVOSBs if the VA determines there is a reasonable expectation (1) it will receive two or more offers from SDVOSBs, (2) two or more SDVOSBs are capable of performing the work, and (3) award can be made at a fair and reasonable price. 38 U.S.C. § 8127(d); VA Acquisition Regulation (VAAR) § 819.7005. We refer to this test as the VA Act's "Rule of Two." *Aerosage LLC*, B-414314, B-414314.2, May 5, 2017, 2017 CPD ¶ 137 at 6.

Determining whether there is a reasonable expectation of receiving offers from two or more SDVOSBs that are capable of performing the required work is a matter of informed business judgment within the contracting officer's discretion; we will not disturb this judgment absent a showing it was unreasonable. *In and Out Valet Co.*, B-411019,

² Although we do not address each of the protester's arguments, we have considered them and find none to be meritorious.

Apr. 15, 2015, 2015 CPD ¶ 128 at 3. The 2006 VA Act provides no particular methodology for assessing the availability of SDVOSBs to perform a requirement; measures such as prior procurement history, market surveys, advice from the agency's small business specialists, and information concerning prospective offerors' business history and capability or capacity may all provide a reasonable basis for a decision to set aside, or not set aside, a requirement for SDVOSBs. *Id.*

Here, we have no basis to object to the contracting officer's market research and resulting set-aside decision. With respect to the first prong of the Rule of Two, the VA's market research identified four SDVOSBs, three of which had direct experience providing CBOC services to the VA in accordance with the PACT model. *Id.* at 3. Additionally, the record indicates that two of the SDVOSBs that responded to the sources sought notice for this procurement also submitted proposals in response to a separate procurement for CBOC services. AR, exh. 5, April 2020 Market Research Report at 576. That procurement was also set aside for SDVOSBs and the proposals submitted by those two firms conformed to the terms of that solicitation. *Id.* The record thus supports the VA's conclusion that it was likely to receive two or more offers from SDVOSBs.

The record also supports the VA's finding that two or more of the SDVOSBs expected to submit offers are capable of performing the requirements of the RFP. The VA's market research indicates that one of the SDVOSBs that responded to this sources sought notice was awarded a VA contract to provide CBOC services under a separate solicitation, and that this contractor has experience providing healthcare service support to over 5,000 patients on an annual basis, which exceeds the number of expected patients here. *Id.* at 587. Another of the responding firms operates thirty CBOCs across the country, and, according to the agency, it conducts each of these operations in accordance with the PACT model. *Id.* Finally, the contracting officer determined that a third firm was capable of performing because, in 2017, the VA awarded it four separate CBOC contracts to serve a combined 4,354 patients at four separate locations. *Id.* at 576. Therefore, the record supports the VA's contention that at least two SDVOSBs are capable of performing the services here.

Finally, the contracting officer concluded that award could be made at a fair and reasonable price. The contracting officer relied on her expectation of price competition among the SDVOSB concerns in concluding that a fair and reasonable price could be expected. *Id.* at 589. The protester has provided us with no basis to question the reasonableness of the contracting officer's determination in this regard.

The protester provides its own research on the expected costs of performance, and based on this research, speculates that SDVOSBs will not have the financial capability to perform. Protest at 4-5. To the extent the protester contends that, as part of its market research, the agency should have requested each prospective offeror to submit information demonstrating its ability to perform and meet the financial requirements of the contract, agencies need not make actual determinations of responsibility or decisions tantamount to determinations of responsibility in making set-aside decisions;

rather, they need only make an informed business judgment that there is a reasonable expectation of receiving reasonably priced offers from small business concerns that are capable of performing the contract. *Walker Dev. & Trading Group, Inc.*, B-414365, May 18, 2017, 2017 CPD ¶ 151 at 2. The record indicates that the VA has satisfied this requirement here.

The protest is denied.³

Thomas H. Armstrong
General Counsel

³ CRAssociates raises additional objections to other solicitation terms. Protest at 7-9. Under our Bid Protest Regulations, only an interested party, i.e., an actual or prospective offeror whose direct economic interest would be affected by the award of a contract, may protest a federal procurement. 4 C.F.R. § 21.0(a). Because we conclude that the agency's determination to set the procurement aside for SDVOSBs was proper, and because the protester acknowledges that it is not an SDVOSB, CRAssociates is not an interested party to challenge the terms of the solicitation. Even if we were to sustain its protest on another basis, it would be ineligible for award. *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Accordingly, CRAssociates's remaining protest grounds are dismissed.