



Decision

Matter of: Veterans Construction of South Carolina, LLC

File: B-401723.2

Date: January 21, 2010

Leonard W. Childs, Jr., Esq., for the protester.
Melissa McClellan, Esq., Department of Agriculture, for the agency.
Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

In a sealed bid procurement that was set aside for service-disabled veteran-owned small business concerns, the expiration of the apparent low bidder's Online Representations and Certifications Application records prior to bid opening does not render the bid nonresponsive, where the applicable representations and certifications pertain only to the bidder's status and eligibility for award, and not to the firm's commitment to provide the required services.

DECISION

Veterans Construction of South Carolina, LLC, of Santee, South Carolina, protests the proposed award of a contract by the Department of Agriculture, Natural Resources and Conservation Services, to the Blackmon Companies, Inc., of Smithfield, North Carolina, under invitation for bids (IFB) No. AG-4741-S-09-0001, for the removal and disposal of tornado debris.

We deny the protest.

The IFB, issued as a service-disabled veteran-owned small business (SDVOSB) set-aside, provided for the award of a fixed-price, services contract for the removal and disposal of tornado debris along stream channels at several sites in Williamson County, Tennessee. The solicitation included standard Federal Acquisition Regulation (FAR) clause 52.204-7, "Central Contractor Registration" (CCR), which informed bidders, in relevant part, that they must be registered in the CCR database prior to award, see FAR § 52.204-7(b)(1), and warned that if a bidder did not become registered in the CCR database by the time prescribed by the contracting officer, the contracting officer would proceed to award to the next otherwise successful,

registered bidder.¹ See FAR § 52.204-7(f). The IFB also included standard FAR clause 52.204-8(d), through which the bidder represents (in relevant part) that it has completed and reviewed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website, and verifies (by submitting a bid) that the firm's relevant representations and certifications currently posted electronically are current, accurate, complete and applicable to the solicitation as of the date of the bid and are incorporated in the bid by reference.²

Agriculture received 14 bids, including Blackmon's and Veterans' by the July 30, 2009 bid opening date. Blackmon submitted the apparent low bid, and Veterans submitted the apparent next low bid. Contracting Officer's Statement at 1. Veterans complained to the agency's contracting officer that Blackmon was not an SDVOSB concern. When the contracting officer attempted to verify Blackmon's status, she found that, although Blackmon was registered in the CCR database, it was not identified as an SDVOSB concern, and that Blackmon's ORCA record had expired on February 27, 2009.³ Blackmon was identified as an SDVOSB concern, however, on the Vetbiz website of the Department of Veterans Affairs (VA).⁴ On September 28, Blackmon updated its ORCA records, certifying that it was an SDVOSB concern. Agency Report, Tab O, Blackmon's ORCA Records.

Veterans protests Agriculture's proposed award to Blackmon, arguing that the expiration of Blackmon's ORCA record prior to bid opening renders the firm's bid nonresponsive. Veterans also challenged Blackmon's status as an SDVOSB concern to Agriculture, which forwarded this status protest to the Small Business Administration (SBA). SBA dismissed Veterans' size challenge as untimely filed, and SBA's Office of Hearing and Appeals affirmed the dismissal. Award has not been made pending our decision in this matter.

¹ The CCR is a database used to collect and manage contractor information, including taxpayer identification numbers and electronic fund transfer information. Kloppenburger Enters., Inc., B-294709, Dec. 10, 2004, at 2.

² ORCA is the primary government repository for contractor submitted representations and certifications. See FAR § 2.101. Prospective contractors are required to update representations and certifications submitted to ORCA "as necessary, but at least annually, to ensure they are kept current, accurate, and complete." FAR § 4.1201(b)(1).

³ Blackmon's ORCA record also does not identify the firm as an SDVOSB concern.

⁴ VA maintains a database on its www.vetbiz.gov website of "validated" SDVOSB concerns.

Blackmon's status as an SDVOSB concern is not in dispute here. The issue before our Office is whether Blackmon's bid was nonresponsive because the firm's ORCA record had expired at the time of bid opening. Veterans contends that Blackmon's bid is nonresponsive and could not be made responsive after bid opening when Blackmon updated its ORCA records.

A responsive bid is one that, if accepted by the government as submitted, will obligate the contractor to perform the exact thing called for in the solicitation. See FAR § 14.301; Propper Mfg. Co., Inc.; Columbia Diagnostics, Inc., B-233321, B-233321.2, Jan. 23, 1989, 89-1 CPD ¶ 58. Responsiveness is determined at the time of bid opening from the face of the bid documents. Unless something on the face of the bid, or specifically a part of it, limits, reduces or modifies the bidder's obligation to perform in accordance with the terms of the solicitation, the bid is responsive. Cal-Tex Lumber Co., Inc., B-277705, Sept. 24, 1997, 97-2 CPD ¶ 87 at 3.

With respect to certificates and representations, we examine the certificate or representation to determine whether it concerns the bidder's responsiveness (that is, its commitment to provide the required services) or its responsibility. Generally, we have found that the failure of a bidder to include completed standard representations and certifications with its bid does not render the bid nonresponsive because it does not affect the bidder's material obligations. See Charter Envtl., Inc., B-297219, Dec. 5, 2005, 2005 CPD ¶ 213 at 4; see also Nomura Enter. Inc.-Recon., B-244993.2, B-245521.2, Oct. 9, 1991, 91-2 CPD ¶ 322 at 3.

Here, none of the applicable representations and certifications in Blackmon's ORCA record reduces or modifies Blackmon's obligation to perform in accordance with the IFB requirements. In this regard, we have found that the failure of a bidder under a small business set-aside to provide a properly executed certification of small business status with its bid is normally waivable and the appropriate representation may be made after bid opening because it pertains only to the bidder's status and eligibility for award, not to the firm's commitment to provide the required service.

Cal-Tex Lumber Co., Inc., supra, at 3 n.1. Accordingly, we find that Blackmon's bid was responsive.⁵

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁵ Veterans also argues that, since FAR clause 52.204-8 requires bidders to verify that their online representations and certifications are current, accurate, complete and applicable to the solicitations "as of the date of the bid," a failure to do so renders the bid nonresponsive and therefore may not be remedied after bid opening. The terms of a solicitation cannot, however, convert a matter of eligibility or responsibility into one of responsiveness. See, e.g., Aviation Specialists, Inc.; Aviation Enters., Inc., B-218597, B-218597.2, Aug. 15, 1985, 85-2 CPD ¶ 174 at 3; Mobility Sys. and Equip. Co., B-243332, Apr. 25, 1991, 91-1 CPD ¶ 412 at 3.