



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** American Medical Response

**File:** B-406274

**Date:** March 16, 2012

---

E.A. "Seth" Mills Jr., Esq., and Kevin M. Meckler, Esq., Mills Paskert Divers, Attorneys At Law, for the protester.  
Rebecca L. Tranthem, Esq., Department of Veterans Affairs, for the agency.  
Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest that Department of Veterans Affairs unreasonably set aside an acquisition for service-disabled, veteran-owned small businesses is denied where record shows that agency's market research demonstrated that at least two such firms would likely submit proposals and that award could be made at a fair and reasonable price; the fact that none of the firms had a county-issued license at the time of the agency decision to set aside the acquisition is immaterial to the propriety of the agency's decision.

---

### DECISION

American Medical Response (AMR), of Tampa, Florida, protests the terms of request for proposals (RFP) No. VA-248-10-RP-0660, issued by the Department of Veterans Affairs (VA) for non-emergency wheelchair/stretchers transportation services for the southeastern United States. AMR maintains that the agency improperly issued the RFP as a service-disabled, veteran-owned small business (SDVOSB) set aside.

We deny the protest.

The RFP contemplates the award of a requirements contract to the firm submitting the lowest priced, technically acceptable proposal. The sole question in this case is whether the agency reasonably set aside the acquisition for SDVOSBs pursuant to the requirements of the Veterans Benefits, Health Care, and Information

Technology Act of 2006 (the VA Act), which provides in pertinent part:

(d) Use of restricted competition.--Except as provided in subsections (b) and (c), for purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans 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) (2006). The protester maintains that there are no SDVOSBs that can meet the terms of the solicitation which requires, among other things, for the successful contractor to maintain documentation that it meets all requirements of federal, state, county or city codes regarding the operation of wheelchair/stretchers transportation service vehicles. RFP at 10. More specifically, the RFP requires that the successful contractor must be licensed to perform the contemplated services in Hillsborough County, Florida, by the Hillsborough County Public Transportation Commission (HCPTC). Id. According to the protester, none of the prospective SDVOSB offerors is licensed to perform the services by the HCPTC.<sup>1</sup>

We find no merit to the protest. The VA Act, by its terms, requires that the contracting activity set aside acquisitions for SDVOSBs where it has a reasonable expectation that there are at least two such concerns that will submit offers, and that award can be made at a fair and reasonable price. 38 U.S.C. § 8127(d).

Here, the record shows that the agency conducted market research in connection with its decision to set aside this acquisition. Specifically, the agency issued a sources sought request for information. The agency received 12 responses to its request for information. Of the 12 responses, three were from verified SDVOSBs, three were from registered, but as yet not verified SDVOSBs, one was from a

---

<sup>1</sup> The protester references other RFP provisions that require all of the contractor's personnel to meet the State of Florida Regulations for licensing and certification stipulations through the HCPTC; require all of the contractor's drivers to meet the regulations of the HCPTC; and require all of the contractor's vehicles to be licensed and meet the minimum vehicle operational and safety standards mandated by the State of Florida and Hillsborough County. RFP at 10-11. However, the protester's allegations are confined to its assertion that none of the potential SDVOSB contractors has been licensed to perform the serviced by the HCPTC.

verified veteran owned small business and the remainder were from small or large businesses not owned by veterans. Agency Report (AR), exh. 4. On the basis of this market research, the contracting officer concluded that there was a reasonable expectation that the agency would receive proposals from at least two SDVOSBs, and that prices submitted likely would be competitive. Id. The record thus shows that the contracting officer here acted in accordance with the requirements of the VA Act and, based on his market research, determined to set aside the acquisition for SDVOSBs.<sup>2</sup> 38 U.S.C. § 8127(d).

The record further shows that, in response to the RFP, the agency received 5 proposals, two from verified SDVOSBs, one from a registered, but as yet not verified, SDVOSB, one from a verified veteran owned small business and one from a large business (the protester). AR, exh. 4. The results of the competition thus effectively validated the contracting officer's initial expectation that the agency would receive at least two proposals from SDVOSBs.

As a final matter, we point out that general solicitation provisions of the type included here that require the "contractor" to obtain all necessary licenses or permits needed to perform the work do not require that a bidder or offeror demonstrate compliance prior to award. Chem-Spray-South, Inc., B-400928.2, June 25, 2009, 2009 CPD ¶ 144 at 5-6. Instead, the securing of licenses or permits is a performance requirement that may be satisfied during contract performance. Id. The issue of whether the successful contractor here ultimately obtains the licenses and permits is a matter of contract administration, which our Office does not review. See id.; 4 C.F.R. §21.5(a) (2011).

The protest is denied.

Lynn H. Gibson  
General Counsel

---

<sup>2</sup> In support of its position, the protester submitted an affidavit from the executive director of the HCPTC in which he represents that none of the firms identified by the agency's market research was licensed by the HCPTC. Protest, exh. J. The affidavit is dated June 14, 2011, approximately 9 months before the date of this decision, and there is no evidence in the record to show that this representation remains true. In fact, according to the affiant, at least one of the SDVOSB concerns identified by the agency's market research was scheduled to have a hearing before the HCPTC on July 20, 2011 in connection with its application for a license.