



Decision

Matter of: HurtVet Subcontracting, LLC

File: B-419139

Date: December 2, 2020

Mark R. Thomas, Esq., and Marcos Gonzalez, Esq., Reid Law PC, for the protester. Daniel McFeely, Esq., Department of Veterans Affairs, for the agency. Christine Milne, Esq., Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency failed to conduct sufficient market research prior to setting aside the procurement for small business concerns is denied where the record shows the agency conducted reasonable market research.

DECISION

HurtVet Subcontracting, LLC, a service-disabled veteran-owned, small business (SDVOSB) of Lillian, Alabama, protests the terms of request for proposals (RFP) No. 36C26220R0173, issued by the Department of Veterans Affairs (VA) for testing and maintenance of the fire, life, and safety systems for all buildings located at the VA's Long Beach Healthcare System campus. HurtVet argues that the agency improperly failed to set the acquisition aside either for SDVOSB concerns or veteran-owned small business (VOSB) concerns.

We deny the protest.

BACKGROUND

Prior to issuing the solicitation, the agency conducted market research to determine if the solicitation should be set aside for either SDVOSB concerns or VOSB concerns. The agency initially performed research in its Vendor Information Pages (VIP) database to determine if there were any SDVOSBs or VSOBs capable of performing the services. Agency Report (AR), exh. 2, Contracting Officer's Statement (COS) at 1. The agency's initial research identified three companies that specialized in design build and electrical work, but the agency determined that none of these firms were capable of performing the required services. AR, exh. 4, Market Research Report, at 3.

On August 11, 2020, in an effort to validate its initial finding, the agency published a sources sought notice seeking expressions of interest from SDVOSB and VOSB concerns. AR, exh. 3, Sources Sought Notice. The agency received two responses to this notice; one from an SDVOSB, and the other from a small business, both of whom were determined capable of providing the services required. AR, exh. 4, Market Research Report, at 3. The protester did not respond to the agency's sources sought notice. Based on these results, the agency decided to issue the solicitation as a small business set-aside, concluding that there were not two or more SDVOSBs or VOSBs capable of meeting the agency's requirement. *Id.*

After preparing its market research report, the agency sought the concurrence of the cognizant small business liaison who agreed that the procurement should not be set aside for SDVOSBs or VOSBs based on the results of the agency's market research, and agreed that it would be appropriate to conduct the acquisition as a small business set-aside. AR, exh. 5, VA Small Business Liaison Approval at 1.

On August 20, the contracting officer posted a pre-solicitation notice announcing the solicitation and seeking small business vendors interested in providing a proposal. AR, exh. 6, Pre-Solicitation Notice. Once again, the protester did not respond to this notice, nor did the agency receive an expression of interest from any other vendors. COS at 1. On August 24, the agency issued the RFP as a small business set-aside with a proposal submission deadline of September 11. AR, exh. 1, RFP at 1.

On August 27, the protester filed an agency-level protest challenging the terms of the RFP, arguing that it should be set aside for SDVOSB or VOSB concerns. The agency denied HurtVet's agency-level protest by letter dated September 3. AR, exh. 8, Agency Level Protest Decision. Thereafter, on September 14, HurtVet filed this protest.

DISCUSSION

The protester argues that the agency unreasonably decided to set aside the procurement for small business concerns, instead of SDVOSBs or VOSBs, based on inadequate market research. Protest at 3-4. More specifically, the protester argues that the agency unreasonably required all interested parties to affirmatively respond to the sources sought announcement. *Id.* at 4. The protester also argues that a search for SDVOSBs in the Long Beach area on the agency's own website displays dozens of qualified businesses, and, according to the protester, this demonstrates that the agency would receive proposals from at least two SDVOSB or VOSB concerns. *Id.* at 5.

We find no merit to the protest. The VA is required by statute to set aside all acquisitions for SDVOSB or VOSB concerns where the agency's market research leads it to conclude that there is a reasonable expectation that two or more such concerns are likely to submit offers, and that award can be made at a fair and reasonable price. 38 U.S.C. § 8127(d). While the requirements of 38 U.S.C. § 8127(d) do not dictate the use of any particular methodology in assessing the availability of potential

SDVOSB concerns, our Office has explained that the assessment must be based on sufficient evidence to establish its reasonableness. *Veteran Shredding, LLC*, B-417399, June 4, 2019, 2019 CPD 210 at 3.

Here, the record shows that the agency took reasonable steps to discover whether two potentially eligible concerns would be interested in, and capable of, responding to the solicitation. The contracting officer performed a search of the agency's VIP database; researched several businesses individually as a result of that search; and also issued both a sources sought notice and a pre-solicitation notice. The contracting officer also investigated the one SDVOSB that did respond to the sources sought notice, and while that firm was determined to be capable of providing the required services, this did not provide a basis for the agency to determine that there were likely two or more SDVOSBs capable of meeting its requirement.

We point out that the protester itself effectively contributed to the outcome of the agency's market research by failing to respond to either the sources sought or the pre-solicitation notices. There is no merit to the protester's suggestion that the requirement to affirmatively respond to the agency's sources sought notice is, in and of itself, unreasonable. Simply stated, in the absence of a response from eligible potential SDVOSB or VOSB concerns such as the protester, there is no way for the agency to divine the interest or capabilities of such businesses.

As a final matter, we find no merit to the protester's argument that the number of firms that appear as the result of the protester's search of the VIP database shows that the procurement should have been set aside for SDVOSBs. The VA's investigation must address not only the existence of small businesses that might submit proposals, but also their capability to perform the contract. See *Kevcon, Inc.*, B-406101, *et al.*, Feb. 6, 2012, 2012 CPD ¶ 95. HurtVet has proffered no evidence to show that any of the firms identified in its search have the capability to meet the agency's requirements here.

The protest is denied.

Thomas H. Armstrong
General Counsel