



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Crosstown Courier Service, Inc.

File: B-406262

Date: March 21, 2012

Christopher Noyes, Crosstown Courier Service, Inc., for the protester.
Kate Gorney, Esq., and Dennis Foley, Esq., Department of Veterans Affairs, for the agency.

Jacqueline Maeder, Esq., Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The Veterans Benefits, Health Care, and Information Technology Act of 2006 requires the Department of Veterans Affairs to determine whether two or more service-disabled veteran-owned small business concerns can meet its requirement at a reasonable price before proceeding with a Federal Supply Schedule acquisition.

DECISION

Crosstown Courier Service, Inc. of Chicopee, Massachusetts, a service-disabled veteran-owned small business (SDVOSB) concern, protests the terms of request for quotations (RFQ) No. VA261-11-RQ-1653, issued by the Department of Veterans Affairs (VA) for commercial courier services to transport diagnostic blood and urine specimens on a set schedule from outlying VA laboratories to the main VA laboratories in Palo Alto and Livermore, California. Crosstown asserts that the agency improperly failed to comply with the requirement of the Veterans Benefits, Health Care, and Information Technology Act of 2006, 38 U.S.C. §§ 8127-8128 (2006) (the VA Act), and its implementing regulations to determine whether this procurement should be set aside for SDVOSB (or veteran-owned small business (VOSB)) concerns.

We sustain the protest.

This procurement is being conducted pursuant to General Services Administration Federal Supply Schedule (FSS) procedures and implementing regulations, set forth at Federal Acquisition Regulation (FAR) subpart 8.4. In accordance with those

regulations, the solicitation was conducted as a discretionary small business set aside confined to small business vendors holding FSS contracts. FAR § 805-5.

Crosstown asserts that the VA acted improperly by using FSS procedures without first conducting market research to determine whether the procurement should be set aside for SDVOSB (or VOSB) concerns. Crosstown maintains that if the agency had conducted market research, it would have found that at least two SDVOSBs could meet the requirement at a reasonable price. The agency concedes that it did not conduct market research to determine whether two or more SDVOSB (or VOSB) concerns could meet the requirement at a reasonable price.

By decision dated March 14, 2012, Aldevra, B-406205, Mar. 14, 2012, 2012 CPD ¶ ___, we sustained a protest filed by another SDVOSB concern against a VA procurement being conducted pursuant to FSS procedures in which, like here, the protester asserted that the agency had failed to comply with the requirements of the VA Act and its implementing regulations. The issue raised and the agency's arguments in the recent Aldevra protest are the same as the issue and arguments presented here; in fact, the arguments presented in the agency's briefs in both cases are identical.

For the same reasons that we discussed at length in our recent decision, we reject the VA's arguments in the current protest. Here, as in Aldevra, supra, the VA has not conducted market research to determine if there are two or more eligible SDVOSB (or VOSB) concerns capable of performing the agency's requirements. Consistent with our recent decision, we conclude that the 2006 VA Act requires that the agency make a determination whether an acquisition should be set aside for SDVOSB (or VOSB) concerns prior to conducting a procurement using FSS procedures. We therefore sustain Crosstown's protest.

RECOMMENDATION

We recommend that the agency conduct reasonable market research regarding its requirement under the solicitation. If it determines that there is a reasonable expectation that two or more SDVOSB (or VOSB) concerns can meet the requirement at a reasonable price, we recommend that the agency cancel the solicitation and re-solicit the requirement as an SDVOSB (or VOSB) set-aside. We also recommend that the agency reimburse the protester the costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d)(1) (2011). Crosstown's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel