



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Starlight Corporation, Inc.

File: B-410471.2

Date: December 30, 2014

Johnathan M. Bailey, Esq., Bailey & Bailey, P.C., for the protester.
Lt. Col. James H. Kennedy III, Maj. Michael G. King, and Deborah L. Collins, Esq.,
Department of the Air Force, for the agency.
Pedro E. Briones, Esq., and Nora K. Adkins, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably set aside an acquisition for service-disabled, veteran-owned small businesses is denied where the 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.

DECISION

Starlight Corporation, Inc., of San Diego, California, protests the terms of request for proposals (RFP) No. FA3047-14-R-0006, issued by the Department of the Air Force for aircraft services. Starlight, the incumbent contractor (and a women-owned small business, WOSB), asserts that the RFP should not have been set aside for service-disabled, veteran-owned small businesses (SDVOSB).

We deny the protest.

BACKGROUND

The requirement is for aircraft fleet, lavatory, wash, and lubrication services for assigned and transient aircraft to the 433d Airlift Wing at Joint Base San Antonio-Lackland (JBSA-LKD), Texas.¹ Contracting Officer (CO) Statement, at 1. The

¹ These services involve various pre- and post-flight tasks such as cleaning the aircraft's cabin, galley, and lavatories; removing trash; and delivering meals and beverages. RFP, Performance Work Statement (PWS) § 3.1, Task 1-Fleet &

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procurement is being conducted under the commercial item procedures of Federal Acquisition Regulation (FAR) part 12 and FAR subpart 13.5, and, as mentioned above, is set aside for SDVOSBs.² RFP at 78, 85, 88; CO Statement at 2.

Prior to issuing the RFP as a set-aside, the agency conducted market research to determine the size and status of potential sources. CO Statement at 4. The Air Force posted a sources sought notice on the Federal Business Opportunities (FedBizOpps) website that included a market research questionnaire, or survey. Id. at 5. The survey was also sent to almost 70 firms, from all socioeconomic contracting programs (such as 8(a), WOSB, or SDVOSB contractors), that are listed in the Small Business Dynamic Search database (http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm) under the relevant NAICS code.³ Id. at 4; Agency Report (AR), Tab 5, Market Research Rep., at 2.

The market research survey described the required services as follows:

The contractor shall provide Fleet services, De-fleet services, Lavatory services, and Aircraft Wash & Maintenance service functions to all assigned, transient, and visiting aircraft to the 433d Airlift Wing (AW). The contractor shall furnish all personnel, equipment, tools, materials, supervision and other items necessary to perform such services on C-5, C-17, C-130, KC-135, KC-10 or any other transient aircraft supporting or visiting 433 AW.

See, e.g., AR, Tab 6, Market Research Questionnaire Responses, at 1 (emphasis added). The survey asked prospective offerors to list and provide contract details for any experience servicing “aircrafts equivalent to C-5” during the last 5 years. Id. at 2. The survey also asked respondents to identify their socioeconomic status under the applicable NAICS code, and specify the services that the firm provides--fleet services, lavatory services, aircraft wash, and/or maintenance and lubrication. Id. at 1.

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Aircraft Service, at 6-8; append. C, Pre-Fleet/De-Fleet Checklist. The services also include aircraft wash and maintenance functions, such as aircraft lubrication, and the delivery of potable water. RFP, PWS § 3.2, Task 2-Aircraft Wash & Maintenance Functions, at 8-11; id. § 3.3, Task 3-Delivery of Potable Water to Flight Line Area, at 11.

² FAR subpart 13.5 authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$6.5 million.

³ The NAICS (North American Industry Classification System) code for this procurement is 488190. RFP at 1.

Fourteen small businesses responded to the survey, ten of which the Air Force found had relevant, recent experience, including six SDVOSB firms. AR, Tab 5, Market Research Rep., at 2-4; CO Statement at 5.

In addition to conducting the market research survey, the agency's contracting officials searched the FedBizOpps website and government-wide procurement databases to identify recent similar procurements. CO Statement at 2. They found a number of similar procurements, including a 2012 procurement for aircraft services at McConnell Air Force Base (AFB), Kansas, that was set aside and awarded to a SDVOSB firm. AR, Tab 5, Market Research Rep., at 1-2; see www.fbo.gov/spg/USAF/AMC/22CONS/FA4621-12-R-0004/listing.html (synopsis for the McConnell AFB procurement). The contracting officials contacted their counterparts at McConnell AFB to discuss the procurement, and learned that McConnell AFB had received 13 offers from SDVOSBs, 11 of which were considered responsive, and that the services were primarily for KC-135 and similar frame aircraft. CO Statement at 7; AR, Tab 5, Market Research Rep., at 1.

Based on this market research, the agency concluded that the required services were commercially available and that there was a reasonable expectation of receiving proposals from at least two responsible SDVOSBs. AR at 3; AR, Tab 5, Market Research Rep., at 7. The Air Force issued the RFP as a SDVOSB set-aside, and four SDVOSB offerors submitted proposals. CO's Statement at 3. Starlight filed the current protest prior to the due date for proposal submissions.

DISCUSSION

Starlight, which is not a SDVOSB, protests that the Air Force should not have set aside the RFP for such firms, and challenges the agency's market research. The protester argues, based on its experience as the incumbent, that the services required at JBSA-LKD are almost exclusively for C-5 aircraft, but that the market research survey misled respondents into believing that services are required for an equal number of other aircraft types (C-17, C-130, KC-135, and KC-10). Comments at 3-4; Protest at 8-9. Starlight also argues that the agency misled offerors by suggesting that those aircraft are equivalent to C-5s, and points out the technical differences in that regard, such as C-5's much larger frame and, in particular, its greater number (triple, according to Starlight) of lubrication points.⁴ Protest at 3, 7. Although Starlight concedes that two SDVOSB survey respondents have experience servicing C-5s, the protester contends that their experience is limited

⁴ See generally Air Force Fact Sheets, available at www.af.mil/AboutUs/FactSheets.aspx (searchable database with depictions, features, and mission of U.S. Air Force planes).

insofar as they have provided services solely to *transient* C-5 aircraft.⁵ Comments at 3. For example, such an inexperienced contractor, Starlight suggests, could overlook many of the plane's lubrication points.⁶ Protest at 7.

The Air Force argues that its market research and determination that the agency could expect to receive proposals from at least two responsible SDVOSB concerns, were reasonable and consistent with relevant FAR provisions. AR at 6. The Air Force suggests that the protester overstates the requirement, which, according to the agency, does not involve specialized tasks or require highly skilled labor, unique qualifications, or any particular certifications, regardless of the aircraft type or size. See id. at 5, 7-8. For example, the Air Force states that the contractor will not be required to remove panels, operate hydraulics, or power an aircraft in order to lubricate its moving parts, and points out that the agency will provide initial training on aircraft washing, fleet services, and lubrication. See id. at 5, 7, citing PWS at 13-14 (government-furnished training). The protester disputes that this initial, one-time training is sufficient to make up for SDVOSBs' "complete lack" of C-5 experience. Comments at 4.

Under FAR § 19.502-2(b), a procurement with an anticipated dollar value of more than \$150,000, such as the one here, must be set aside for exclusive small business participation when there is a reasonable expectation that offers will be received from at least two responsible small business concerns and that award will be made at fair market prices. No particular method of assessing the availability of capable small businesses is required; rather, the assessment must be based on sufficient facts so as to establish its reasonableness. Mountain West Helicopters, LLC; Trans Aero, Ltd., B-408150, B-408150.2, July 1, 2013, 2013 CPD ¶ 152 at 3. The decision whether to set aside a procurement may be based on an analysis of factors such as the prior procurement history, the recommendations of appropriate small business specialists, and market surveys that include responses to sources sought announcements. Commonwealth Home Health Care, Inc., B-400163, July 24, 2008, 2008 CPD ¶ 140 at 3. In making set-aside decisions, agencies need not make actual determinations of responsibility or decisions tantamount to determinations of responsibility; rather, they need only make an informed business judgment that there is a reasonable expectation of receiving acceptably priced offers from small business concerns that are capable of performing the contract. Ceradyne, Inc., B-402281, Feb. 17, 2010, 2010 CPD ¶ 70 at 4.

⁵ The RFP defines transient aircraft as supporting or visiting aircraft which transit through, but are not assigned to, JBSA-LKD. PWS at 24.

⁶ The incumbent and bridge contracts only require Starlight to provide wash and lavatory services, whereas the solicitation here increased the scope of work to include aircraft lubrication and fleet services. CO Statement at 1-2.

Because a decision whether to set aside a procurement is a matter of business judgment within the contracting officer's discretion, our review generally is limited to ascertaining whether that official abused his or her discretion. Information Ventures, Inc., B-400604, Dec. 22, 2008, 2008 CPD ¶ 232 at 3; ViroMed Labs., B-298931, Dec. 20, 2006, 2007 CPD ¶ 4 at 3-4; Information Ventures, Inc., B-279924, Aug. 7, 1998, 98-2 CPD ¶ 37 at 3. We will not question an agency's small business determination where the record shows that the evidence before the contracting officer was adequate to support the reasonableness of the conclusion that small business competition reasonably could be expected. Commonwealth Home Health Care, Inc., supra, at 3.

Here, the agency's set-aside determination is unobjectionable. The record, as described above, shows that the Air Force conducted ample market research in connection with its decision to set aside the acquisition for SDVOSB, including: (1) issuing a sources sought notice and questionnaire; (2) identifying potential small business offerors using available government contractor databases; (3) surveying those businesses regarding their socioeconomic status; and (4) contacting contracting officials at other Air Force bases to discuss recently conducted procurements for similar aircraft services.⁷ We agree with the agency that this market research is consistent with the requirements of the FAR, and we find no basis to sustain Starlight's protest that the agency unreasonably set aside the procurement for SDVOSBs.⁸

Significantly, Starlight concedes that two SDVOSB firms have experience servicing C-5 aircraft. Comments at 3. To the extent that the protester contends that these SDVOSB firms may have limited experience, we find that the protester has not persuasively rebutted the agency's argument that the services being procured are not complex, do not involve specialized tasks, or otherwise require highly skilled labor, unique qualifications, or certifications. Moreover, we are not persuaded by the protester that it was unreasonable for the Air Force to consider experience providing services to C-17, C-130, KC-135, and KC-10 aircraft relevant to providing

⁷ Although Starlight complains that the McConnell AFB contract was for services on KC-135 aircraft, Comments at 4, that contract, like the RFP here, also requires the contractor to provide aircraft lubrication. RFP No. FA4621-12-R-0004, PWS, at 11-12, available at www.fbo.gov.

⁸ There is no order of precedence among the 8(a), HUBZone, SDVOSB, or WOSB programs. 13 C.F.R. § 125.2(f)(2) (2012).

similar services to C-5 aircraft, and we disagree with the protester that the agency misled offerors in that regard.

The protest is denied.

Susan A. Poling
General Counsel