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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: In and Out Valet Company

File: B-411019

Date: April 15, 2015

James Tramonte for the protester.

David G. Fagan, Esq., Department of Veterans Affairs, for the agency.

Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's decision not to set aside a procurement for service-disabled veteran-owned small businesses (SDVOSBs) is denied where the agency reasonably concluded from its market research that it did not have a reasonable expectation of receiving proposals from two or more SDVOSBs capable of performing the required services at a fair and reasonable price.

DECISION

In and Out Valet Company (IOVC), of Irwin, Pennsylvania protests the terms of Department of Veterans Affairs' (VA) request for quotations (RFQ) No. VA260-15-Q-0049, for valet parking services for the VA Puget Sound Health Care System in Seattle, Washington. The protester, a service-disabled veteran-owned small business (SDVOSB) concern, asserts that the VA should have set the procurement aside for SDVOSBs.

We deny the protest.

BACKGROUND

The RFQ, issued on January 7, 2015, and set aside for small businesses, seeks proposals to provide fast, efficient, and professional valet parking services to alleviate the congestion and delays in the limited parking areas for the VA Puget Sound Health Care System facilities in Seattle. The successful contractor is to furnish all necessary labor, supervision, materials, equipment, services, and supplies needed to perform valet parking services for approximately 650 to 750 vehicles per day. RFQ at 7, 9.

In October 2014, prior to issuing the RFQ, the contracting officer conducted market research to identify SDVOSBs or veteran-owned small businesses (VOSBs) with North American Industry Classification System (NAICS) code No. 812930 (parking lots and garages) using the VetBiz web portal to search the Vendor Information Pages (VIP) database.¹ Based on the VetBiz research, the agency found only two companies that were listed as VOSBs or SDVOSBs under the relevant NAICS code and were located in the state of Washington, neither of which appeared to provide valet parking services. Agency Report (AR), Tab 1, Contracting Specialist's Statement at 1. The contracting specialist then expanded his search to the nearby states of Oregon, Idaho, and California, in which he found 12 companies listed as VOSBs or SDVOSBs under the relevant NAICS code, only one of which performs valet parking services. Id. at 1. The contracting specialist then performed a search without geographic restriction and found 46 VOSB and SDVOSB companies nationwide under the relevant NAICS code. Further market research revealed that six of these companies perform valet parking services. The six companies were located in California, Texas, Virginia, Pennsylvania, North Carolina, and South Carolina. Id.

The agency also considered the procurement history of this requirement. Id. Specifically, the contract specialist noted that the last time the requirement was competed, it was set aside for SDVOSBs. However, the awardee performed for only one week before ceasing performance. The agency then awarded to the SDVOSB that was next in line for award, but the second contractor informed the agency that it was also unable to perform the contract. See id.; AR, Tab 4, E-mails, at 36. As a result, the agency had to issue a sole source contract to the incumbent contractor to perform the services until the agency could again compete the requirement. Id.

As a result of the lack of SDVOSB businesses in close geographical proximity to the place of performance, and the procurement history of SDVOSBs having difficulty in meeting this requirement, the agency concluded that there was not a reasonable expectation of receiving offers from two or more SDVOSB firms that would be capable of performing the required work at a fair and reasonable price. Accordingly, the agency posted the solicitation on January 7 as a small business set-aside.

On January 8, IOVC contacted the agency to request that the procurement be set aside for SDVOSBs, and on January 13 it filed this protest.

¹ VetBiz is the web portal maintained by the VA, which hosts the Vendor Information Pages (VIP) database of businesses approved to participate in VA's veteran-owned small business program. See 38 C.F.R. § 74.1.

DISCUSSION

IOVC asserts that the VA failed to perform sufficient market research to ascertain the interest and capability of SDVOSBs to perform the requirement. Specifically, the protester notes that there are 46 SDVOSB firms nationwide registered under NAICS code 812930, and that four of those firms are currently performing contracts under that NAICS code. Therefore, IOVC contends that the agency abused its discretion in failing to set the procurement aside for SDVOSBs.

Under the Veterans Benefits, Health Care, and Information Technology Act of 2006, 38 U.S.C. § 8127, and the VA's implementing regulations, VA Acquisition Regulation (VAAR), 48 C.F.R. §§ 819.7004, 819.7005, the VA is required to set aside acquisitions for SDVOSBs whenever it determines that there is a reasonable expectation that offers will be received from at least two SDVOSB firms and that award can be made at a fair and reasonable price. 38 U.S.C. § 8127(d); VAAR § 819.7005. The determination as to whether there is a reasonable expectation of receiving offers from two or more SDVOSB firms that are capable of performing the required work is a matter of informed business judgment within the contracting officer's discretion that we will not disturb absent a showing that it was unreasonable. Crosstown Courier Serv., Inc., B-410936, March 12, 2015, 2015 CPD ¶ 107 at 4; Crosstown Courier Serv., Inc., B-407404, Nov. 30, 2012, 2012 CPD ¶ 333 at 3; Buy Rite Transp., B-403729, B-403768, Oct. 15, 2010, 2010 CPD ¶ 245 at 3. The requirements of the 2006 VA Act do not dictate the use of any particular methodology in assessing the availability of SDVOSB firms to perform a requirement; measures such as prior procurement history, market surveys, advice from the agency's small business specialist, and information concerning prospective offerors' business history and capability or capacity may all provide a reasonable basis for a decision to set aside, or not set aside, a requirement for SDVOSBs. Crosstown Courier Serv., Inc., B-410936, *supra*; FlowSense, LLC, B-310904, Mar. 10, 2008, 2008 CPD ¶ 56 at 3. Further, we have held that, even where an RFP does not restrict competition to firms located in a particular geographical area, an agency may focus its market research on the geographical area in which performance will take place and consider the likelihood that firms from outside it would respond to the solicitation. Crosstown Courier Serv., Inc., B-407404, *supra*, at 3.

We conclude that the agency's market research and resulting set-aside decision were reasonable. The statement of work for this procurement requires the successful contractor to provide bonded, fully trained, experienced staff with valid Washington State driver licenses to perform valet parking services for approximately 650 to 750 vehicles daily at VA Puget Sound Health Care System facilities located in Seattle, Washington. RFQ at 7, 9. In addition, the RFQ requires the successful contractor to have the valet parking site ready to provide full service by the February 1, 2015 start date. *See* RFQ at 1, 5, 8; AR, Tab 2, Market Research Report, at 1; AR, Tab 4, E-mails, at 24. Given these requirements, we

find that there was nothing unreasonable in the agency's decision to focus its market research on the geographic area in which performance was to occur, and to consider the likelihood that firms from outside of the geographic area would be able to effectively and timely perform the contemplated contract.

As noted above, in conducting its market research, the agency used the NAICS code for parking lots and garages to search the VetBiz database to identify potential SDVOSB firms, then researched the firms' websites to determine whether the company performed valet parking services. The agency initially searched only in Washington state and found that there were no SDVOSB firms under the relevant NAICS code that perform valet parking services. The agency then expanded its search to the nearby states of Oregon, Idaho, and California, and found only one SDVOSB firm (located in California) under the relevant NAICS code that performs valet parking services. Finally, the agency removed all geographic restrictions and identified five other firms nationwide under the relevant NAICS code that perform valet parking services. The agency considered the geographic location of each of these companies--Texas, Virginia, Pennsylvania, North Carolina, and South Carolina--and concluded that given their distance from the site of performance, there was not a reasonable expectation of receiving offers from two or more SDVOSB firms that would be capable of performing the required work at a reasonable price.² Although the protester lists other websites and databases that it contends the agency should have searched, Comments at 1-2, the protester has not shown the agency's research here to be unreasonable in light of the discretion

² After the solicitation had been issued and IOVC contacted the agency to request that the requirement be set aside for SDVOSBs, the contract specialist performed additional research regarding the interest and capability of SDVOSB firms in remote locations to perform this requirement, including contacting each of the firms individually to discuss their capabilities. Specifically, the contract specialist contacted five of the SDVOSB firms identified as performing valet parking services elsewhere in the country to inquire whether they would be interested in competing for the requirement and capable of meeting the solicitation's terms. Id. at 2. In response, three of the firms, in addition to the protester, claimed that they would be able to begin performance by the February 1, 2015, start date. Id. at 28, 30, 46. However, information that, as here, first becomes available after the issuance of a solicitation does not show that an agency's prior decision not to set aside the procurement was unreasonable. Crosstown Courier Serv., Inc., B-410936, supra, at 6; see J. Morris & Assoc., Inc., B-254093 et al., Nov. 16, 1993, 93-2 CPD ¶ 284 at 3. While the contracting officer retains the discretion to make new set-aside determinations after a solicitation has been issued, there is no requirement that a contracting officer restrict a procurement after the solicitation is issued where the determination not to set aside the solicitation was reasonable at the time the solicitation was issued. Crosstown Courier Serv., Inc., B-410936, supra, at 3-4.

afforded to contracting officers. See Crosstown Courier Serv., Inc., B-410936, supra.

Finally, the agency also considered the procurement history of this requirement. As set forth above, the agency considered the fact that it had previously made award to an SDVOSB firm, which was unable to perform the contract. After terminating the first contract, the agency awarded to another SDVOSB that was also unable to perform the contract. The agency's inability to find an SDVOSB firm ultimately led the agency to issue a sole source contract to the incumbent contractor to perform the required services until the agency could conduct a new competition. AR, Tab 4, E-mails, at 36.

Based on this record, we find that the agency reasonably concluded that there was no reasonable expectation that offers would be received from at least two SDVOSB firms capable of performing the required work at a fair and reasonable price. The agency conducted searches of the VetBiz database, reasonably focused its market research on the geographical area in which performance will take place, and considered the likelihood that firms from outside it would respond to the RFQ. The agency did further market research by reviewing the websites of SDVOSB firms with the relevant NAICS code to investigate whether these firms perform valet parking services. In addition, the agency reasonably considered the fact that two SDVOSBs had previously been unable to perform the incumbent contract. In these circumstances, we find no basis to sustain the protest against the agency's determination not to set aside the procurement for SDVOSBs.

The protest is denied.

Susan A. Poling
General Counsel