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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Singleton Enterprises- GMT Mechanical, A Joint Venture

File: B-311343

Date: April 23, 2008

Arthur Wayne Singleton and Gary Michael Thompson, for the protester.
Natica L. Chapman, Esq., Department of Veterans Affairs; and Kevin R. Harber, Esq., Small Business Administration, for the agencies.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected bid of joint venture under a solicitation set aside for service-disabled veteran-owned small business concerns (SDVOSBC), where the Small Business Administration had determined with regard to another solicitation that the joint venture did not qualify as an SDVOSBC and this determination, which had been affirmed by the SBA's Office of Hearings and Appeals, remained in force and effect when the agency rejected the joint venture's bid.

DECISION

Singleton Enterprises-GMT Mechanical, A Joint Venture (JV) protests the rejection of its bid by the Department of Veterans Affairs (VA) under invitation for bids (IFB) No. VA-256-08-IB-0086, for the renovation of a garage file storage area at the VA Regional Office in Jackson, Mississippi.

We dismiss the protest because the joint venture was not an eligible service-disabled veteran-owned small business concern (SDVOSBC).

The agency issued the IFB on January 15, 2008, as a total set-aside for SDVOSBCs. In this regard, the IFB included the clause at Federal Acquisition Regulation (FAR) § 52.219-27, entitled, "Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside," under which a firm must represent at the time it submits its bid that it is an eligible SDVOSBC. Four firms, including Singleton-GMT JV, submitted bids in response to the solicitation at issue by the February 14 bid opening date.

Meanwhile, on January 22, the VA filed a protest with the Small Business Administration (SBA) regarding the SDVOSBC eligibility of the Singleton-GMT JV

with regard to its bid under Solicitation No. VA-249-07-IB-0058 issued by the VA Medical Center, Lexington, Kentucky.¹ On February 20, SBA's Director for Government Contracting sustained VA's protest and found that Singleton-GMT JV was not eligible to represent itself as an SDVOSBC for purposes of Federal procurement opportunities, or to bid on or receive contracts set aside for competition among SDVOSBCs.

The low bid in response to the solicitation under protest here was rejected for reasons not germane to this protest. Singleton-GMT JV's second low bid was rejected on February 27 based on the SBA's February 20 determination that the Singleton-GMT JV was not an eligible SDVOSBC and could not certify itself to be such on other procurements.

On March 5, Singleton-GMT JV then filed an appeal of SBA's determination with the agency's Office of Hearing and Appeals (OHA), and submitted the instant bid protest to our Office on March 11. On March 27, the OHA affirmed the SBA's determination that Singleton-GMT JV did not qualify as an SDVOSBC. VA Submission (Mar. 27, 2007), attach., SBA OHA Decision (Mar. 27, 2007).

The VA has requested our Office to dismiss Singleton-GMT JV's protest because the rejection of the bid was mandated by the SBA's determination that the joint venture was not eligible to receive awards under solicitations that are set aside for SDVOSBCs. We solicited the views of the SBA on this protest, which concurs with the VA's position. We are required to give deference to an agency's reasonable interpretation of its regulations, and because the SBA is the agency responsible for promulgating the regulations regarding the SDVOSBC program we give its interpretations of its regulations great weight. Singleton Enters. -- GMT Mech., A Joint Venture, *supra*, at 3.

As discussed in Singleton Enters. -- GMT Mech., A Joint Venture, *supra*, at 4, Federal Acquisition Regulation § 19.307(h) and 13 C.F.R. § 125.24(b) provide for the SBA's resolution of questions of SDVOSBC status and for an agency procedure to protest a firm's SDVOSBC status to the SBA. Consistent with the SBA's regulations, 13 C.F.R. § 125.27(g) and 125.28 (2007), the SBA's February 20 determination that Singleton-GMT JV is not an SDVOSBC expressly stated that the determination was effective "immediately" and was "final" unless overturned on appeal or unless relief was

¹ Our Office previously sustained Singleton-GMT JV's protest concerning the VA's rejection of the joint venture's bid as nonresponsive under Solicitation No. VA-249-07-IB-0058. We sustained the protest because the VA's rejection was based on its finding that the joint venture was not a proper SDVOSBC but this determination could not be made by the agency because it was subject to determination by the SBA. Singleton Enters. -- GMT Mech., A Joint Venture, B-310552, Jan. 10, 2008, 2008 CPD ¶ 16.

granted under 13 C.F.R. § 125.27(g) (e.g., a change in ownership to satisfy the SDVOSBC definition), and that because of this determination the joint venture was ineligible to bid on or receive any SDVOSBC contract awards. VA Dismissal Request, exh. 4, SBA's SDVOSBC Determination.

According to the SBA, given that the OHA has affirmed the SBA's determination, before Singleton-GMT JV can bid on or receive SDVOSBC contracts, the joint venture must request that SBA grant it relief under 13 C.F.R. § 125.27(g), and prove that it merits such relief by documenting the actions it has taken to address those problems with its eligibility that were identified by SBA. If the SBA agrees that the firm qualifies as an SDVOSBC, then the agency will grant relief under 13 C.F.R. § 125.25(g) and issue a new determination letter to the firm stating that it qualifies as an SDVOSBC and that it is eligible to bid on and receive SDVOSBC contracts. To date Singleton-GMT JV has not requested, and SBA has not granted, relief from that decision under 13 C.F.R. § 125.27(g).²

Singleton-GMT JV also contends that the OHA decision affirming the SBA's determination that the joint venture is not an SDVOSBC was not yet final but, under 13 C.F.R. § 227(a), was only the OHA's initial decision and could not be final for 30 days. Thus, the protester contends, the VA cannot rely upon the SBA's and OHA's determinations to reject Singleton-GMT JV's bid. However, as noted by the SBA, OHA's rulings on appeal are effective immediately, and are final, unless or until the judge chooses to reconsider the ruling; in fact the OHA's decision states that "[t]his is the final decision of the Small Business Administration." VA Submission (Mar. 27, 2007), attach., SBA OHA Decision (Mar. 27, 2007) at 8.

Because the SBA's February 20 determination that Singleton-GMT JV was not an SDVOSBC has remained in force and effect, the VA properly rejected Singleton-GMT JV's bid.

The protest is dismissed.

Gary L. Kepplinger
General Counsel

² We disagree with the protester's contention that "the only plausible process for a concern to show that it has overcome the reasons for the protest in the earlier solicitation is to 'self-represent' its status as a SDVOSBC to the contracting activity as part of its offer on a later solicitation." Singleton-GMT JV's Comments (Apr. 16, 2008) at 3. In this regard, 13 C.F.R. § 125.28 states that "the protested concern cannot self-represent its status for another procurement until it has cured the eligibility issue." 13 C.F.R. § 125.28; see also 13 C.F.R. § 127(g) (quoted above).