

## Happy New Year!

Happy new year to all friends and clients of the Amadeo Law Firm! We wish our government contracting colleagues a successful and prosperous 2012.

In this edition of The Government Procurement Bulletin, on the heels of two recent GAO decisions that address requirements in bid invitations for brand-specific manufactured products and for certifications (e.g., SDVOSB) necessary prior to a set-aside contract award, we provide pointers to government contractors. We also highlight OSDBU, the premier government contracting event that takes place on April 19, 2012, in Washington DC.

## Bits on Bids: Recent GAO Rulings on Bid Protests

*In re Government Contracting Services, LLC*  
B-405996 (January 17, 2012)

Recently, the U.S. Government Accountability Office (GAO) denied a bid protest by Government Contracting Services, LLC, after the U.S. Department of Veterans Affairs (VA) rejected the company's low bid for a contract set aside for service-disabled veteran-owned small businesses (SDVOSB's). The VA's solicitation for services to renovate a patient waiting area at the VA Medical Center in Grand Junction, Colorado required bidders to be certified as SDVOSB's by the VA's Center for Veterans Enterprise "prior to submission of bids." However, at the time it submitted its bid, Government Contracting Services' application for inclusion in the VA's vendor information pages database as an SDVOSB had been denied and the company's request for reconsideration of the decision was pending. The VA's contracting officer, therefore, rejected the company's low bid because Government Contracting Services was not an eligible SDVOSB prior to its bid submission. Before the contract was awarded to another bidder, however, Government Contracting Services' request for reconsideration of its SDVOSB eligibility was granted and the company became an eligible SDVOSB. The company then filed its bid protest challenging the VA's decision to reject its bid.

In its decision, the GAO rejected the company's argument that at the time it submitted its bid, it was "merely waiting an overdue ruling" on its request for reconsideration. Since the VA's bid invitation required a bidder to be certified as an SDVOSB prior to submission of bids (as opposed to prior to contract award), the GAO upheld the VA's decision and denied the bid protest.

**GovCon Pointer:** Responding to a request for a proposal or invitation for bid can be time-consuming and may require an organization to divert its resources. Before embarking on the process, companies should pay careful attention to any certification requirements, particularly language that sets forth timing requirements for any required certifications, in order to maximize opportunities and preserve resources. As the GAO's decision makes clear, when a solicitation requires a company to be certified as of a specific time during the bidding process, a pending certification application will not suffice. To read the GAO decision, go [here](#).

*In re Veterans Contracting Group, Inc.*  
B-405940 (January 12, 2012)

In another decision involving the U.S. Department of Veterans Affairs (VA), the GAO sustained a bid protest by the Veterans Contracting Group, Inc. (VCG) after the VA rejected VCG's bid on a contract set aside for service-disabled veteran-owned small businesses (SDVOSB's). The contract requirements were for a refrigerated chiller at the VA's New York Harbor Medical Center and the bid invitation identified three chiller manufacturers whose products "may" be incorporated in a responding proposal, as well as two specific refrigerants that "could" be used in the chiller.

In its bid, VCG submitted a main proposal that identified a chiller manufactured by a company not listed in the VA's invitation that used a refrigerant not specified by the VA. VCG's bid also included an alternative proposal that identified a chiller manufactured by one of the three companies listed in the VA's bid invitation. The VA, however, concluded that VCG's bid was nonresponsive because it failed to meet material requirements of the specifications and drawings in the bid invitation. In the protest proceedings before the GAO, the VA insisted that its invitation called for a specific "brand name refrigerant." The VA also argued that the chiller identified in VCG's main proposal failed to meet specifications, but the VA failed to elaborate on this point. The VA also decided that VCG's alternative proposal, which did identify a chiller manufactured by a company on VA's list, caused VCG's bid to be "contradictory" and nonresponsive.

In its decision, the GAO agreed that the VA properly rejected VCG's alternative proposal because the VA's bid invitation included a FAR clause stating the agency would not consider an alternative bid unless an invitation for bid authorized it. However, with regard to VCG's main proposal, the GAO decided that the bid invitation only specified product manufacturers and refrigerants that "could" be used, but that were not required to be used, and further that the VA failed to support its conclusion that VCG's proposed chiller otherwise did not meet specifications and drawings. The GAO remanded the case to the VA to reconsider VCG's main proposal to determine if the chiller satisfies specifications of the bid invitation and awarded attorneys fees and costs to VCG.

**GovCon Pointer:** When assessing if they can meet technical bid requirements, contractors should pay careful attention to clauses that identify manufacturers or manufactured products to determine if the manufacturers or products are actually required or if they are merely illustrative of the types of products that can be used to satisfy contract requirements. As exemplified in this decision, the GAO will require government agency contracting officers to determine if proposed non-"brand" manufactured products meet technical requirements when a solicitation merely identifies a brand or manufactured that "may" or "could" be used to satisfy contract requirements. To read the GAO decision, go [here](#).

## Featured GovCon Event: OSDBU 2012

The 2012 OSDBU Procurement Conference will be held this year on April 19, 2012, at the Walter E. Washington Convention Center, in Washington DC. OSDBU is one of the premier federal government contracting events in the country, attracting exhibitors from Federal, State and local governments and some of the most active prime contractors in the federal marketplace, as well as small businesses from all over the country. The conference includes matchmaking sessions and the new venue in downtown Washington, DC, provides an ideal opportunity for businesses throughout the greater Washington-Baltimore-Frederick triangle to meet potential teaming partners. For more information and to register, go [here](#).

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