

**United States Small Business Administration
Office of Hearings and Appeals**

CVE Protest of:

In and Out Valet Co.,

Protestor,

Re: ABBA Project Management

Solicitation No. 36C26220R0162

U.S. Department of Veterans Affairs

SBA No. CVE-174-P

Decided: December 16, 2020

APPEARANCES

James T. Tramonte, President/CEO, In and Out Valet Co., Irwin, Pennsylvania

Christopher R. Shiplett, Esq., Randolph Law, PLLC, Falls Church, Virginia, for ABBA Project Management

DECISION¹

I. Introduction and Jurisdiction

On October 29, 2020, In and Out Valet Co. (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of ABBA Project Management (ABBA) in connection with U.S. Department of Veterans Affairs (VA) Request for Proposals (RFP) No. 36C26220R0162. Protestor contends that ABBA will be unusually reliant upon a non-SDVOSB subcontractor to perform the contract, in contravention of 13 C.F.R. §§ 125.18(f) and 134.1003(c). For the reasons discussed *infra*, the protest is denied.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) adjudicates SDVOSB status protests pursuant to 38 U.S.C. § 8127(f)(8)(B) and 13 C.F.R. part 134 subpart J.² Protestor filed its protest within five business days after receiving notification

¹ This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. OHA received one or more requests for redactions, and considered all such requests in redacting the decision. OHA now issues this redacted decision for public release.

² The regulations at 13 C.F.R. part 134 subpart J became effective on October 1, 2018. 83 Fed. Reg. 13,626 (Mar. 30, 2018).

that ABBA was the apparent awardee, so the protest is timely. 13 C.F.R. § 134.1004(a)(2)(i). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation

On August 17, 2020, VA issued RFP No. 36C26220R0162 for off-site parking services in support of the VA Medical Center (VAMC) in San Diego, California. (Case File (CF), Exh. 139, at 1.) The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 812930, Parking Lots and Garages, with a corresponding size standard of \$41.5 million average annual receipts. (*Id.*) Proposals were due September 8, 2020. (*Id.* at 33.)

According to the RFP's Statement of Work, the contractor will “provide off-site parking services” for patients and visitors at the VAMC. (*Id.* at 5.) The contractor must make available a parking facility, or a portion thereof, that is dedicated solely for use under the instant contract. (*Id.*) VA will furnish “shuttle service between the contractor's facility and the VAMC.” (*Id.*) The contractor must offer valet parking services to customers, must supply and maintain restrooms for customers' use, and must provide security personnel and cameras to assist in the prevention and detection of unauthorized access, theft and vandalism. (*Id.* at 6-8.) The Statement of Work identified several required parking facility staff, including an on-site manager, a valet concierge, and valet attendants. (*Id.* at 6.)

B. Proposal

ABBA's proposal identified itself as the prime contractor and [Subcontractor] as its principal subcontractor. The proposal stated that ABBA will “provide the qualified personnel, materials, maintenance, security and supervision necessary to provide off-site parking services,” and that ABBA will “ensure that the facility is attended and accessible twenty-four (24) hours per day, every day.” (Proposal at 16-17.) ABBA proposed [XXXXXX] approximately 2.2 miles from the VAMC. (*Id.* at 13-14.) The proposal included [XX] examples of past performance for ABBA, and [XX] for [Subcontractor]. (*Id.* at 24-27.) The proposal did not specify a proposed distribution of labor between ABBA and [Subcontractor].

C. Protest

On October 22, 2020, the CO informed Protestor that ABBA was the apparent awardee. Protestor filed the instant protest on October 29, 2020, and the CO forwarded the protest to OHA for review.

In its protest, Protestor alleges that ABBA will be unusually reliant on a non-SDVOSB subcontractor to perform the contract. (Protest at 1.) More specifically, according to Protestor, ABBA has “zero past performance with any government agency directly,” and therefore must depend upon [a] subcontractor. (*Id.* at 1-2.) Protestor contends that ABBA cannot meet limitation on subcontracting requirements. (*Id.* at 1.) Protestor also asserts that ABBA may be controlled by

GafCon, Inc. (GafCon), a firm with which ABBA has “long-standing business relationships and subcontracting.” (*Id.*)

D. ABBA's Response

On November 18, 2020, ABBA responded to the protest. ABBA argues that Protestor's allegations are not supported by credible evidence and therefore should be dismissed. (Response at 1.) In the alternative, OHA should find that ABBA is not unusually reliant upon any subcontractor and that ABBA is fully owned and controlled by Mr. Alexander S. Buggy, a service-disabled veteran. (*Id.*)

ABBA argues that it will perform the primary and vital requirements of the instant contract and is not unusually reliant on its subcontractor, [Subcontractor]. ABBA proposed to lease a garage from [XXXXX]. (*Id.* at 4.) Contrary to Protestor's claims that ABBA lacks relevant experience, ABBA's proposal identified [XX] past projects where ABBA had performed parking development and parking management services. (*Id.* at 4-5.) The RFP did not require a detailed explanation of the source of labor for this contract. (*Id.* at 5.) In developing its proposal, however, ABBA anticipated that it would manage the contract and would provide [XXXXXXXXXXXXXXXXXX]. (*Id.*) ABBA planned to subcontract [XXXXXX XXXX] to [Subcontractor], but on the condition that the subcontracting arrangement must comport with limitation on subcontracting requirements. (*Id.* at 6.) As a result, ABBA maintains, ABBA itself will provide [more than 50]% of the value of the services, including all of the managerial services, whereas [Subcontractor] will provide approximately [XX]% of the value of the services. (*Id.*)

ABBA argues that it cannot be found unusually reliant upon a non-SDVOSB subcontractor if it meets the limitations on subcontracting provisions found in 13 C.F.R. § 125.6. (*Id.* at 10, citing 13 C.F.R. §§ 125.18(f)(2) and 134.1003(c).) Here, ABBA will pay [Subcontractor] approximately [XX]% of the amount the government pays to ABBA for services. (*Id.* at 12.) As this is well less than 50%, ABBA is not unusually reliant upon [Subcontractor]. (*Id.*)

ABBA highlights that it is fully owned and controlled by a service-disabled veteran, Mr. Buggy. (*Id.* at 7.) Mr. Buggy owns 100% of ABBA, is ABBA's sole director, and serves as President, CEO, and Secretary of the corporation. Mr. Buggy [XXXXXXXXXXXXXXXXXX]. (*Id.* at 7.) Since [XXXX], ABBA has worked as a subcontractor to GafCon on [XX] projects. ABBA also has several other clients, though, and ABBA's work with GafCon does not constitute [XL] of ABBA's revenue. (*Id.*)

Accompanying its response, ABBA offers a variety of supporting documents, including a completed SBA Form 355, a sworn declaration from Mr. Buggy, and a staffing chart showing the planned distribution of labor between ABBA and [Subcontractor].

E. Case File

The Case File indicates that ABBA is a corporation based in the state of California. (CF, Exh. 1.) Mr. Buggy is the sole owner and the sole director of ABBA, and he holds the position of President, ABBA's highest officer position. (CF, Exhs. 2, 6, 35, 36.) Mr. Buggy is a service-disabled veteran. (CF, Exh. 6.) CVE most recently verified ABBA as an SDVOSB on October 2, 2020. (CF, Exh. 130.)

III. Discussion

A. Burden of Proof

As the protested firm, ABBA has the burden of proving its eligibility by a preponderance of the evidence. 13 C.F.R. § 134.1010.

B. Dates to Determine Eligibility

In a CVE Protest pertaining to a procurement, OHA determines the eligibility of the protested concern as of two dates: (1) the date of the bid or initial offer including price, and (2) the date the CVE Protest was filed. *See* 13 C.F.R. § 134.1003(d)(1). Here, ABBA submitted its proposal for the instant procurement on September 8, 2020, and the protest was filed on October 29, 2020. Sections II.A and II.C, *supra*. Therefore, OHA must examine ABBA's eligibility as of these dates, using the substantive ownership and control regulations in effect on each date.

C. Analysis

The record establishes that ABBA is fully owned and controlled by Mr. Buggy, a service-disabled veteran, and there is no indication that any non-service-disabled veteran individual or entity participates in the ownership or management of ABBA. Sections II.D and II.E, *supra*. Although Protestor alleges that ABBA may be controlled by GafCon based on “long-standing business relationships and subcontracting,” Protestor offers no evidence to support this claim. Section II.C, *supra*. Conversely, ABBA has shown that GafCon is only one of its several clients, and that [XXXXXX] of ABBA's revenues. Sections II.D and II.E, *supra*. [XXXXXXXXXXXXX]. Section II.B, *supra*. I therefore see no basis to conclude that GafCon controls ABBA. CVE correctly verified ABBA as an SDVOSB. 13 C.F.R. §§ 125.12 and 125.13.

Protestor's remaining argument is that ABBA will be unusually reliant on a non-SDVOSB subcontractor, [Subcontractor], to perform the instant contract. Section II.C, *supra*. This argument fails because SBA regulations provide that:

SBA will find that a prime SDVO contractor is performing the primary and vital requirements of a contract or order and is not unduly reliant on one or more non-similarly situated subcontract[or]s where the prime contractor can demonstrate that it, together with any similarly situated entity, will meet the limitations on subcontracting provisions set forth in § 125.6.

13 C.F.R. § 125.18(f)(2); *see also CVE Protest of U.S. Dep't of Veterans Affairs*, SBA No. CVE-154-P (2020). Here, the instant RFP did not require, and ABBA's proposal therefore did not provide, a specific description of how work would be divided between ABBA and [Subcontractor]. Sections II.A and II.B, *supra*. In its response to the protest, though, ABBA has explained how it will comply with limitations on subcontracting restrictions, with supporting evidence in support of its assertions, and ABBA's representations are consistent with its underlying proposal. Sections II.B and II.D, *supra*. Pursuant to 13 C.F.R. § 125.18(f)(2), then, ABBA will be performing the primary and vital requirements of this contract, and is not unusually reliant upon [Subcontractor].

IV. Conclusion

ABBA has shown that it is an eligible SDVOSB for the instant procurement. The protest therefore is DENIED. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127(f)(8)(B); 13 C.F.R. § 134.1007(i).

KENNETH M. HYDE
Administrative Judge