

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

CVE Protest of:

Land Shark Shredding, LLC,

Protestor,

Re: Griffin Resources LLC

Solicitation No. 36C24221Q0092
U.S. Department of Veterans Affairs

SBA No. CVE-195-P

Decided: June 3, 2021

APPEARANCES

Stephanie L. Sickler, Esq., Timothy J. Turner, Esq., Whitcomb Selinsky PC, Denver, Colorado, for Land Shark Shredding, LLC.

DECISION¹

I. Introduction and Jurisdiction

On February 23, 2021, Land Shark Shredding, LLC (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Griffin Resources LLC (Griffin) in conjunction with U.S. Department of Veterans Affairs (VA) Request for Quotations (RFQ) No. 36C24221Q0092. Protestor maintains that Griffin will be unusually reliant on 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 sustained.

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 notification that Griffin

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).

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. The RFQ

On October 22, 2020, VA issued RFQ No. 36C24221Q0092 for “Sensitive Document Destruction Container Collection/Removal Services” at the New York VA Medical Center (VAMC) and other nearby VA facilities. (Case File (CF), Exh. 109.) The RFQ contemplated the award of single indefinite-delivery indefinite-quantity (ID/IQ) contract with a one-year base period and three one-year options. (*Id.* at 1, 30.) The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 561990, All Other Support Services, with a corresponding size standard of \$12 million average annual receipts. (*Id.* at 1.) Quotations were due November 9, 2020. (CF, Exh. 111.)

The RFQ's Statement of Work explained that the contractor will be responsible for “all labor and materials necessary for the collection, removal and destruction of sensitive documents.” (CF, Exh. 109, at 4.) More specifically, the contractor must collect sensitive documents from bins at designated VA facilities, and then promptly destroy those materials on-site in shredding trucks provided by the contractor. (*Id.* at 4-6.) The “interim destruction” of documents must occur on-site, but the RFQ permitted that “final destruction to an unreadable and unreconstructable size and form per VA Directive 6371 [may] occur off-site.” (*Id.* at 4-5, 12.) However, if final destruction occurs off-site, it must be witnessed by a contractor employee. (*Id.* at 13.) The RFQ stipulated that all “[s]ervices shall be performed with strict adherence to Federal, State and Local regulations pertaining to the collection, handling, packaging and disposal of sensitive and secured material including VA Directive 6371.” (*Id.* at 4.)

B. Protest

On February 16, 2021, the CO announced that Griffin had been awarded the contract. (CF, Exh. 112.) On February 23, 2021, Protestor, an unsuccessful offeror, filed the instant protest with the CO, challenging Griffin's size and SDVOSB status. The CO forwarded the status portion of the protest to OHA for review.

In its protest, Protestor alleged that Griffin will be unusually reliant upon a non-SDVOSB subcontractor to perform the contract. According to public records, Griffin “appears to be owned and operated solely by one person,” Mr. Christopher J. LaMont, who resides in Oregon. (Protest at 3.) Griffin apparently has no presence in New York City, where the instant contract will be performed. (*Id.* at 5.) Further, there is no indication that Griffin possesses any of the “disposal containers, shredding equipment, transportation equipment, or facilities to effectuate a contract for sensitive document destruction.” (*Id.*) Protestor contended that “Griffin lacks experience in sensitive document destruction and therefore will be required to subcontract [the] principal purpose of the Contract, likely to a dissimilarly situated entity.” (*Id.* at 4.) In addition, the RFQ made clear that the contractor must comply with VA Directive 6371, which in turn requires that

work be performed by a concern that is certified by the National Association for Information Destruction (NAID) for paper/printed media destruction. (*Id.* at 4-5.) Griffin, though, “is not NAID certified.” (*Id.* at 4.) Protestor observed that, although heavy reliance on a large business could be grounds to find Griffin other than small, “[w]here a prime contractor is unduly reliant on a subcontractor, that prime contractor may also be in violation of the status requirements for set aside contracts.” (*Id.*)

Because the protest did not reference any of the specific grounds for an SDVOSB status protest as set forth at 13 C.F.R. § 134.1003, OHA directed Protestor to clarify the grounds for the instant protest. Protestor responded on March 18, 2021, contending that Griffin will be in violation of 13 C.F.R. §§ 125.18(f) and 134.1003(c). Protestor reiterates its view that the instant contract calls for “onsite sensitive document destruction; container collection and removal services” at the New York VAMC and other nearby facilities. (Response at 2.) Griffin “does not meet the standards set forth in VA Directive 6371, has no experience in the sensitive document destruction industry, and has no presence in the New York City vicinity.” (*Id.*) As such, Griffin will likely rely upon a non-SDVOSB subcontractor to perform most, if not all, of this contract. (*Id.*) Protestor renews its contention that VA Directive 6371 requires that a contractor performing document destruction for VA must be NAID-certified. (*Id.* at 2-3.) Griffin's name is not on the list of NAID-certified document destruction concerns. (*Id.* at 3.) Further, Griffin has no experience with sensitive document destruction, nor any equipment to perform such work. (*Id.* at 3-4.)

C. Griffin's Response

In its Notice and Order docketing the protest, OHA directed that Griffin should file any response to the protest by April 9, 2021. Griffin did not respond to the protest.

D. Griffin's Quotation

The CO forwarded OHA a copy of Griffin's quotation for the instant procurement, dated November 9, 2020. The quotation stated that Griffin will team with [Subcontractor] on this contract. (Quotation, Tech. Approach, at 2.) Together, Griffin and [Subcontractor] are referred to throughout the quotation as “Team Griffin.” (*Id.*) According to the quotation, Griffin is an SDVOSB based in the state of Oregon, and has a single employee, Mr. LaMont. (Quotation, Cover Letter, at 7-8.) The quotation identified Griffin as a reseller of medical supplies. (*Id.* at 8.) [Subcontractor] is a large, publicly-traded company, NAID-certified for secure shredding services. (Quotation, Tech. Approach, at 6-8, 11.) The quotation explained that “[a]s one of the largest Document Shredding firms in the United States with numerous local offices throughout, [Subcontractor] has been both a shredding service Prime and Subcontractor on numerous Federal and State contracts over the last 24 years.” (Quotation, Past Performance, at 2.)

The quotation outlined Team Griffin's planned approach to performing the instant contract. The quotation stated that “[o]n destruction days, Griffin and [Subcontractor] employees will escort the locked containers to our specially equipped mobile shredding vehicle.” (Quotation, Tech. Approach, at 4.) The vehicles themselves are owned and operated by [Subcontractor]. (*Id.* at 4-5.) Shred bin information “will transmit to [Subcontractor's] database

in real time” and thus “become part of the verifiable audit trail.” (*Id.* at 5, 12.) Once on-site shredding is complete, “Team Griffin will return all emptied containers to their proper position in the facility.” (*Id.* at 4.) In the event that off-site shredding is requested or is necessary, the “[Subcontractor] driver” will transport the materials to an appropriate “[Subcontractor] shred facility.” (*Id.* at 5.)

III. Discussion

A. Burden of Proof

As the protested firm, Griffin has the burden of proving its eligibility as an SDVOSB 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(c)(1). Here, Griffin submitted its quotation on November 9, 2020, and the instant protest was filed on February 23, 2021. Sections II.B and II.D, *supra*. Thus, OHA must examine Griffin's eligibility as of these dates.

C. Analysis

Protestor has advanced compelling arguments that Griffin, which has only a single employee and no apparent experience with secure document destruction, must rely upon a subcontractor to perform the instant contract, in contravention of 13 C.F.R. §§ 125.18(f) and 134.1003(c). Section II.B, *supra*. Protestor's contentions are corroborated by Griffin's own quotation, which indicates that [Subcontractor], a non-SDVOSB subcontractor, will provide and operate the “specially equipped mobile shredding vehicles” to conduct the requisite on-site document destruction. Section II.D, *supra*. Destruction will be tracked with [Subcontractor's] computer software, and any off-site destruction will be completed at [Subcontractor's] facilities. *Id.* The quotation does not clearly delineate any portion of the contract that will be performed solely by Griffin's employees; instead, Griffin's role appears to consist, at most, of escorting containers to, and from, [Subcontractor's] vehicles. *Id.* SBA regulations stipulate that “[w]here a subcontractor that is not similarly situated performs primary and vital requirements of a set-aside or sole-source service contract or order . . . the prime contractor is not eligible for award of an SDVO contract.” 13 C.F.R. § 125.18(f). Accordingly, because it appears that [Subcontractor], rather than Griffin, will perform all, or nearly all, of this contract, including the actual on-site document destruction, Griffin is not an eligible SDVOSB for this contract.

Griffin did not respond to the protest, and this failure is largely fatal to Griffin's defense. As the challenged firm, Griffin bears the burden of proving its eligibility by a preponderance of the evidence. Section III.A, *supra*. Because Griffin chose not to respond to the protest, it has not carried its burden of proving its eligibility. *CVE Protest of U.S. Dep't of Veterans Affairs*, SBA No. CVE-148-P, at 4 (2020); *CVE Protest of Advanced Mgmt. Strategies Group, Inc. / ReefPoint Group*, SBA No. CVE-120-P, at 5 (2019).

IV. Conclusion

The record reflects that Griffin's non-SDVOSB subcontractor, [Subcontractor], will perform the majority, if not all, of the primary and vital contract requirements. The protest therefore is SUSTAINED. Griffin is not an eligible SDVOSB for the instant contract. 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