

Latvian Connection LLC
Al Shareefa Complex, 5th FL
Kuwait City, Kuwait
Tel: 707 385 9344

SEPT 2, 2015

BY REGISTERED EMAIL

General Counsel
Government Accounting Office
441 G Street, NW
Washington DC 20548
Email: Protests@gao.gov

Attn: Procurement Law Control Group, Room 1139

RE: **Pre Award Protest against the DEPARTMENT OF THE ARMY
SOLICITATION W912D1-15-Q-0097 -Printer Toner/Fuser
FAILING TO SET ASIDE SOLICITATION WITH VALUE OF \$ 3,000 - \$ 150,000**

Dear Procurement Law Group:

Latvian Connection LLC, (“ LC LLC”) A U.S. SMALL BUSINESS SAM REGISTERED with **DUNS: 534749622** CAGE **SGM59**, submits this PRE- AWARD Protest against the: **Department of ARMY** for not setting aside solicitation for U.S. Small Businesses exclusively and violating the Small Business Act.

State argues that the **GAO decision of Latvian Connection General Trading and Construction LLC, B-408633**, Sept. 18, 2013 CPD ¶ 224, applies here. In that case, GAO ruled that FAR 19.000(b) limits the application of FAR part 19 (dealing with SBA’s small business programs) to acquisitions conducted in the United States (and its outlying areas). We believe the basis for the GAO’s ruling was that SBA’s regulation were silent on this issue and therefore, the more specific far regulations controlled.

Heeding this advice, the SBA recently promulgated regulations to address this issue. Specifically, SBA made wholesale changes to 13 CFR § 125.2 on October 2, 2013. As a result, SBA issued a final rule stating that: “Small business concerns must receive any award (including orders, and orders placed against Multiple Award Contracts) or contract, part of any such award or contract, and any contract for the sale of Government property, regardless of the place of performance, which the SBA and the procuring or disposal agency determine to be in the interest of:” 13 C.F.R. § 125.2(a)(emphasis added). Likewise, the rule also states that: “Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors and subcontractors in the contracting opportunities of the Government **regardless of the place of performance of the contract.**” Id. 125.2 (c)(emphasis added).

Therefore, SBA’s policy and legal interpretation of the Small Business has been incorporated into the regulations. In sum, according to statute and regulations, small business set asides, regardless of place of performance, are **mandatory for acquisitions valued from \$ 3,000 to \$ 150,000** We request you invite the SBA to comment please.

¹ In accordance with 4 C.F.R. § 21.1 (c) (1), the relevant electronic mail address for this protest is keven.barnes@LatvianConnectionLLC.com (Representative for the Protester Latvian Connection General Trading and Construction LLC) KUWAIT **DUNS: 534749622** CAGE **SGM59**

² The Contracting Office for this procurement is CAMP ARIFJAN KUWAIT 408th CSB SWA Kuwait Contracting Command and 761st Tank Bat, Fort Hood, TX 76544

INTERESTED PARTY STATUS

Our company is a U.S. Small Business and we will have a reasonable chance of winning the Contract if we are competing against ONLY other U.S. Small Businesses. Therefore, LATVIAN CONNECTION LLC is an actual offeror whose direct economic interest is affected by the award of the Contract and hence, an interested party. 31 U.S.C. § 3551 (2000); FAR 33.101; 4 C.F.R. § 21.0(a)(2006); Designer Assoc. , Inc.,B-293226, FEB 12, 2004 C.P.D. ¶ 114 at 2. We are located in Kuwait and LOCAL to Kuwait and Camp Arifjan. The U.S. Army are using a United States contracting office address.

Contracting Office Address:

1001 761st Tank Bat, Fort Hood, TX 76544 (Exhibit 1)

TIMELINESS OF THIS PROTEST

This is a PRE-Award Protest filed before the bid due in date of **Sept 9, 2015**. (Exhibits 1)

§ 21.2 Time for filing:

(a)(1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.

(2) Protests other than those covered by paragraph (a)(1) of this section shall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier), with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held. This pre award protest is filed before bid due in date of **09 SEPT 2015**.

FACTUAL GROUNDS OF THE PROTEST

The solicitation **W912D1-15-Q-0097** was posted on 01 SEPT 2015 with a bid due in date of 09 SEPT 2015 and was not set aside for U.S. Small Businesses exclusively. (Exhibit 1) and this solicitation has a value of between \$ 3,000 and \$ 150,000.

Request of a ruling by the Comptroller General of the United States

LATVIAN CONNECTION LLC specifically requests that the GAO recommend that the solicitation **W912D1-15-Q-0097** be conducted as a Lowest Priced, Technically Acceptable solicitation on www.fbo.gov and be reserved for U.S. Small Businesses exclusively.

The GAO stated in B-410981:

RECOMMENDATION: We recommend that the agency revise the ground rules of the procurement to conduct the competition in a manner consistent with the Small Business Act and other procurement laws and regulations

REQUEST FOR HEARING OR CONFERENCE AND PROTECTIVE ORDER

If the issues in this case cannot be resolved on the basis of the documents requested, then LATVIAN CONNECTION LLC requests a hearing on all of the matters set forth above. 4 C.F.R. § 21.1 (d)(2008). Latvian Connection LLC does not request a protective order. *GAO - WE EXPRESSLY REQUEST THAT THIS PROTEST NOT BE EXPIDITED.*

LEGAL GROUNDS OF PROTEST

State argues that the **GAO decision of Latvian Connection General Trading and Construction LLC, B-408633**, Sept. 18, 2013 CPD ¶ 224, applies here. In that case, GAO ruled that FAR 19.000(b) limits the application of FAR part 19 (dealing with SBA's small business programs) to acquisitions conducted in the United States (and its outlying areas). We believe the basis for the GAO's ruling was that SBA's regulation were silent on this issue and therefore, the more specific far regulations controlled.

Heeding this advice, the SBA recently promulgated regulations to address this issue. Specifically, SBA made wholesale changes to 13 CFR § 125.2 on October 2, 2013. As a result, SBA issued a final rule stating that: "Small business concerns must receive any award (including orders, and orders placed against Multiple Award Contracts) or contract, part of any such award or contract, and any contract for the sale of Government property, regardless of the place of performance, which the SBA and the procuring or disposal agency determine to be in the interest of:" 13 C.F.R. § 125.2(a)(emphasis added). Likewise, the rule also states that: "Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors and subcontractors in the contracting opportunities of the Government regardless of the place of performance of the contract." Id. 125.2 (c)(emphasis added).

Therefore, SBA's policy and legal interpretation of the Small Business has been incorporated into the regulations. In sum, according to statute and regulations, small business set asides, regardless of place of performance, are **mandatory for acquisitions valued from \$ 3,000 to \$ 150,000**

REQUEST FOR DOCUMENTS

LATVIAN CONNECTION LLC LLC requests that the following materials be included in the agency report, pursuant to 4 C.F.R. § 21.1(d)(2008):

- Copy of Pre-Solicitation Notice
- Copy of Small Business Coordination Record DD FORM 2579 FOR KUWAIT
- Copy of the Bid Abstract
- Copy of the Amendment Amending the solicitation for any reason
- Copy of all unsuccessful offeror letters or notice of awards for the subject solicitation

REQUEST FOR RELIEF AND CONCLUSION

LATVIAN CONNECTION LLC requests that the Agency take corrective action and issue an Amendment, that is posted on www.fbo.gov and that this solicitation as a Lowest Priced, Technically Acceptable solicitation that is reserved for U.S. Small Business concerns exclusively.

We also request that **Latvian Connection LLC** be reimbursed the costs of filing and pursuing its protest, including reasonable protest preparation fees. Bid Protest Regulations 4 C.F.R. § 21.8(d)(1) (2010). Under the Competition in Contracting Act of 1984, the GAO may recommend that protest costs be reimbursed where they find that an agency's action violated a procurement statute or regulation. 31 U.S.C. § 3554(c)(1) (2010). The GAO's Bid Protest Regulations provide that, where the contracting agency decides to take corrective action in response to a protest, the GAO may recommend that the protester be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(e) (2010). The GAO has stated that it "does not mean that costs should be reimbursed in every case in which an agency decides to take corrective action; rather, a protester should be reimbursed its costs where an agency unduly delayed its decision to take corrective action in the face of a clearly meritorious protest. Griner's-A-One Pipeline Servs., Inc.--Costs, B-255078.3, July 22, 1994, 94-2 CPD ¶ 41 at 5.

Respectfully submitted,

KEVEN L. BARNES
CEO
LATVIAN CONNECTION LLC

My FBO	My Profile	Opportunities	Agencies
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Welcome, KEVEN BARNES

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75--Printer Toner/Fuser

Solicitation Number: W912D1-15-Q-0097

Agency: Department of the Army

Office: FedBid

Location: FedBid.com -- for Department of Army procurements only

[Notice Details](#)

[Packages](#)

[Interested Vendors List](#)

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Original Synopsis

Sep 01, 2015
3:56 am

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Solicitation Number:
W912D1-15-Q-0097

Notice Type:
Combined Synopsis/Solicitation

Synopsis:

Added: Sep 01, 2015 3:56 am

This is a combined synopsis/solicitation for commercial items prepared in accordance with the format in FAR Subpart 12.6, as supplemented with additional information included in this notice. The solicitation number is W912D1-15-Q-0097 and is issued as an invitation for bids (IFB), unless otherwise indicated herein. The solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular 2005-83-2. The associated North American Industrial Classification System (NAICS) code for this procurement is 323111 with a small business size standard of 500.00 employees. This requirement is unrestricted and only qualified offerors may submit bids. The solicitation pricing on www.FedBid.com will start on the date this solicitation is posted and will end on 2015-09-09 11:00:00.0 Eastern Time or as otherwise displayed at www.FedBid.com. FOB Destination shall be APO, AE 09366

The 408th CSB SWA Kuwait Contracting Command requires the following items, Purchase Description Determined by Line Item, to the following:

LI 001: Yellow Toner Cartridge Ink-X792X1YG must be compatible with printer Lexmark-X792DTE, 350, EA;

LI 002: Magenta Toner Cartridge Ink-X792A2MG must be compatible with printer Lexmark-X792DTE, 350, EA;

LI 003: Cyan Toner Cartridge Ink-X792X1CG must be compatible with printer Lexmark-X792DTE, 350, EA;

LI 004: Black Toner Cartridge X792X1KG must be compatible with printer Lexmark-X792DTE, 500, EA;

LI 005: Fuser Maint Kit 220-240V Lexmark 40X7101, 73, EA;

LI 006: Black Toner Cartridge CC530A must be compatible with printer HP CP2025, 30, EA;

LI 007: Cyan Toner Cartridge CC531A must be compatible with printer HP CP2025, 30, EA;

LI 008: Yellow Toner Cartridge CC532A must be compatible with printer HP CP2025, 30, EA;

LI 009: Magenta Toner Cartridge CC533A must be compatible with printer HP CP2025, 30, EA;

LI 010: HP Fuser Assembly (220Vac-240V) RM1-6741-040CN, 4, EA;

GENERAL INFORMATION

Notice Type:
Combined Synopsis/Solicitation

Posted Date:
September 1, 2015

Response Date:
September 9, 2015

Archiving Policy:
Automatic, on specified date

Archive Date:
March 7, 2016

Original Set Aside:
N/A

Set Aside:
N/A

Classification Code:
75 -- Office supplies and devices

LI 011: Black Toner Cartridge CE260X must be compatible with printer HP CP4525, 250, EA;
LI 012: Cyan Toner Cartridge CE261A must be compatible with printer HP CP4525, 200, EA;
LI 013: Yellow Toner Cartridge CE262A must be compatible with printer HP CP4525, 200, EA;
LI 014: Magenta Toner Cartridge CE263A must be compatible with printer HP CP4525, 200, EA;
LI 015: Toner Collection Cartridge CE265A must be compatible with printer HP CP4025DN, 27, EA;
LI 016: HP 110V Fuser Kit for Color LaserJet CP4025/CP4525 CE246A, 10, EA;
LI 017: HP 220V Fuser Kit CE247A must be compatible with printer HP CP4525, 17, EA;
LI 018: IMAGE Transfer Kit CE249A must be compatible with printer HP CP4525, 25, EA;
LI 019: Shipping to Camp Arifjan, Kuwait
Please ship by quickest means ie: DHL, FedEx and UPS, 1, LOT;

[Solicitation and Buy Attachments](#)

Question Submission: Interested offerors must submit any questions concerning the solicitation at the earliest time possible to enable the Buyer to respond. Questions must be submitted by using the 'Submit a Question' feature at www.fedbid.com. Questions not received within a reasonable time prior to close of the solicitation may not be considered.

For this solicitation, 408th CSB SWA Kuwait Contracting Command intends to conduct an online competitive reverse auction to be facilitated by the third-party reverse auction provider, FedBid, Inc. FedBid has developed an online, anonymous, browser based application to conduct the reverse auction. An Offeror may submit a series of pricing bids, which descend in price during the specified period of time for the aforementioned reverse auction. 408th CSB SWA Kuwait Contracting Command is taking this action in an effort to improve both vendor access and awareness of requests and the agency's ability to gather multiple, competed, real-time bids. All responsible Offerors that respond to this solicitation MUST submit the pricing portion of their bid using the online exchange located at www.FedBid.com. There is no cost to register, review procurement data or make a bid on www.FedBid.com. Offerors that are not currently registered to use www.FedBid.com should proceed to www.FedBid.com to complete their free registration. Offerors that require special considerations or assistance may contact the FedBid Helpdesk at 877-9FEDBID (877-933-3243) or via email at clientservices@fedbid.com. Offerors may not artificially manipulate the price of a transaction on www.FedBid.com by any means. It is unacceptable to place bad faith bids, to use decoys in the www.FedBid.com process or to collude with the intent or effect of hampering the competitive www.FedBid.com process. Should offerors require additional clarification, notify the point of contact or FedBid at 877-9FEDBID (877-933-3243) or clientservices@fedbid.com. Use of FedBid: Buyers and Sellers agree to conduct this transaction through FedBid in compliance with the FedBid Terms of Use. Failure to comply with the below terms and conditions may result in offer being determined as non-responsive.

New Equipment ONLY; NO remanufactured or "gray market" items. All items must be covered by the manufacturer's warranty.

Bid MUST be good for 45 calendar days after close of Buy.

Shipping must be free on board (FOB) destination OCONUS, which means that the seller must deliver the goods on its conveyance at the destination specified by the buyer, and the seller is responsible for the cost of shipping and risk of loss prior to actual delivery at the specified destination.

This solicitation requires registration with the System for Award Management (SAM) in order to be considered for award, pursuant to applicable regulations and guidelines. Registration information can be found at www.sam.gov. Registration must be "ACTIVE" at the time of award.

The selected Offeror must comply with the following commercial item terms and conditions, which are incorporated herein by reference: FAR 52.212-1, Instructions to Offerors - Commercial Items, applies to this acquisition; FAR 52.212-3, Offeror Representations and Certifications - Commercial Items - the selected offeror must submit a completed copy of the listed representations and certifications; FAR 52.212-4, Contract Terms and Conditions - Commercial Items; FAR 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders-Commercial Items, paragraph (a) and the following clauses in paragraph (b): 52.222-21, 52.222-26, 52.222-35, 52.222-36, 52.222-37, 52.225-13, 52.232-34. The full text of the referenced FAR clauses may be accessed electronically at <https://www.acquisition.gov/far/>.

All items are Brand Name or Equal and compatible to device

Wide Area Workflow (WAWF) is a Web-based system that allows material receipt and acceptance reports (DD250), Invoices, and other payment-related documents to be created, processed and/or distributed electronically. WAWF has been imposed by the Defense Federal Acquisition Regulation Supplement (DFARS) 252.232-7003 and is the official repository for all payment requests, acceptance documents, and RFID data input.

WAWF can be found at: <https://wawf.eb.mil/>

1. How to use WAWF. Training can be found at <http://www.wawftraining.com> under "WAWF Contractor Getting Started Guide." This publication provides in-depth instructions for utilizing the WAWF system to submit your invoices electronically.

In order to enhance the efficiency of the procurement process, the Government will evaluate vendors as either technically acceptable or unacceptable. The Government intends to evaluate only the lowest priced quote to determine if the quote is technically acceptable and whether the vendor has acceptable or neutral past performance. If the lowest priced quote is reasonably priced and technically acceptable and the vendor has acceptable or neutral past performance, the Government intends to make an award to that vendor and no other quote will be evaluated. If the lowest priced offer is not technically acceptable, the vendor does not have acceptable or neutral past performance, or both, then the Government will evaluate the second lowest priced quote for technical acceptability and acceptable or neutral past performance. This method will continue until the lowest priced, technically acceptable quote, by a vendor with acceptable or neutral past performance, is determined. Past performance will be evaluated using SAMS.gov and PPIRS. Quotes will be evaluated based on price and technical acceptability. Person providing the quote certifies that the product meets or exceeds all minimum requirements as stated in the Request for Quote.

ADDENDUM TO FAR Clause 52.212-4(a) Inspection/Acceptance: The Contractor shall NOT make partial line item shipments against any resulting purchase order/contract issued as a result of this solicitation; e.g., if a line item on the contract reads ? HOLSTERS, 184 each, the contractor shall NOT ship 50 holsters on one shipment, following by 100 holsters on a subsequent shipment and the final 34 holsters in still a third shipment. All items ordered on each line item in this contract shall be shipped at one time ? no exceptions. Failure to adhere to this requirement will result in invoices being rejected in Wide Area Workflow and/or a delay in payment for non-conforming shipped quantities. Each and every container shipped under the authority of this contract shall bear the Government's contract number shown in Block 2 of the Standard Form 1449. The contract number shall be displayed clearly and be protected from damage

during shipment. Failure to comply with this requirement could result in rejection of the shipment and the cost of return shipment to the point of origin being the sole responsibility of the contractor ? no exceptions.

Additional Info:

www.fedbid.com (b-747950, n-177966)

Contracting Office Address:

1001 761st Tank Bat, Fort Hood, TX 76544

Place of Performance:

APO, AE 09366

09366

US

Point of Contact(s):

Name: Client Services, Title: Client Services, Phone: 1.877.933.3243, Fax: 703.422.7822, Email: Clientservices@fedbid.com;

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View Details for Buy # 747950

General Buy Information

Buy #: 747950
Solicitation #: W912D1-15-Q-0097
Buy Description : Printer Toner/Fuser
Category : 75 -- Office Supplies and Devices
Sub Category : 7510 -- Office Supplies
NAICS : 323111 -- Commercial Printing (except Screen and Books)
FedBizOpps Solicitation : Yes
Set-Aside Requirement : No Set-Aside Restriction
Buyer : 408th CSB SWA Kuwait Contracting Command
End Date : 09/09/2015
End Time : 11:00 ET
Seller Question Deadline: 9/3/2015 - 17:00 ET
Delivery Days : 45 Day(s) - **Required** (No. of calendar days after receipt of order (ARO) by which Buyer requires Seller to deliver)



Line Item(s)

Item No	Description	Qty	Unit
001	Yellow Toner Cartridge Ink-X792X1YG must be compatible with printer Lexmark-X792DTE	350	EA
002	Magenta Toner Cartridge Ink-X792A2MG must be compatible with printer Lexmark-X792DTE	350	EA
003	Cyan Toner Cartridge Ink-X792X1CG must be compatible with printer Lexmark-X792DTE	350	EA
004	Black Toner Cartridge X792X1KG must be compatible with printer Lexmark-X792DTE	500	EA
005	Fuser Maint Kit 220-240V Lexmark 40X7101	73	EA
006	Black Toner Cartridge CC530A must be compatible with printer HP CP2025	30	EA
007	Cyan Toner Cartridge CC531A must be compatible with printer HP CP2025	30	EA
008	Yellow Toner Cartridge CC532A must be compatible with printer HP CP2025	30	EA
009	Magenta Toner Cartridge CC533A must be compatible with printer HP CP2025	30	EA
010	HP Fuser Assembly (220Vac-240V) RM1-6741-040CN	4	EA
011	Black Toner Cartridge CE260X must be compatible with printer HP CP4525	250	EA
012	Cyan Toner Cartridge CE261A must be compatible with printer HP CP4525	200	EA
013	Yellow Toner Cartridge CE262A must be compatible with printer HP CP4525	200	EA
014	Magenta Toner Cartridge CE263A must be compatible with printer HP CP4525	200	EA
015	Toner Collection Cartridge CE265A must be compatible with printer HP CP4025DN	27	EA
016	HP 110V Fuser Kit for Color LaserJet CP4025/CP4525 CE246A	10	EA
017	HP 220V Fuser Kit CE247A must be compatible with printer HP CP4525	17	EA
018	IMAGE Transfer Kit CE249A must be compatible with printer HP CP4525	25	EA
019	Shipping to Camp Arifjan, Kuwait Please ship by quickest means ie: DHL, FedEx and UPS	1	LOT

Bidding Requirements

Instructions

Seller Attachment(s): In addition to providing pricing through the marketplace, Sellers MUST include certain **non-pricing** information as document(s) attached to their Bid, so they are received no later than the closing date and time of this Buy. Pricing will not be accepted if it is included in the attachment(s). Attachment(s) can total no more than 20 MB, whether multiple files or one file, and may be zipped to decrease their size. A Seller's failure to comply with these terms may result in its Bid being determined to be non-responsive. The attachment(s) must include the following **non-pricing** information: Vendor must provide supporting documentation demonstrating that the minimum specifications listed above are met or exceeded. We need the listed items/part Numbers to be what's asked for: not offset, due to the region of the country we are in and voltage needed for our printers being used.

Open Market: Open Market bids are accepted in this solicitation; however, please refer to the specifications below, including 'Set-Aside Requirement' provision, for additional requirements.

Purchase Description Determined by Line Item: The solicitation requires that Buyer evaluates bids on a line item basis; therefore, each line item will include applicable evaluation criteria. For all line items, Sellers MUST enter exactly what they are bidding (including make, model, and description) into the blank description field in order for the bid to be considered.

Minimum Bid Decrement is \$100: The Buyer is requiring that any rebid must be lower than the 'current bid price' by this amount. The reduction is based on the total order and must be satisfied within the rebid minimum.

Purchase Order or Delivery Order: Buyer intends to issue award using a purchase order or delivery order. Bids from Sellers unable to accept purchase orders or delivery orders will not be considered for award.

Set-Aside Requirement: There is no Set-Aside restriction for this Buy.

Use of FedBid: Buyers and Sellers agree to conduct this transaction through FedBid in compliance with the FedBid Terms of Use. Failure to comply with the below terms and conditions may result in offer being determined as non-responsive.

Evaluation Criteria/Basis of Award: Sellers understand that FedBid ranks all Bids by price; however, pursuant to applicable acquisition regulations and/or departmental guidelines, Buyers may

use criteria other than price to evaluate offers. Accordingly, please note that, unless otherwise specified in the Buy Terms, below, to the extent required by applicable regulations and/or guidelines, award will be made to the responsible Seller whose offer conforming to the solicitation will be most advantageous to the Buyer on the basis of price, technical capability, delivery, and past performance.

Question Submission: Interested offerors must submit any questions concerning the solicitation at the earliest time possible to enable the buyer to respond. Questions can be submitted by using the 'Questions & Responses' link. Questions not received within a reasonable time prior to close of the solicitation may not be considered.

Default Terms: Unless otherwise specified in the Buy Terms, below, Bid must be good for 30 calendar days after close of Buy and shipping must be free on board (FOB) destination CONUS (Continental U.S.)

Buy Terms

Name	Description
Equipment Condition	New Equipment ONLY; NO remanufactured or "gray market" items. All items must be covered by the manufacturer's warranty.
Offer Period	Bid MUST be good for 45 calendar days after close of Buy.
Shipping Condition	Shipping must be free on board (FOB) destination OCONUS, which means that the seller must deliver the goods on its conveyance at the destination specified by the buyer, and the seller is responsible for the cost of shipping and risk of loss prior to actual delivery at the specified destination.
SAM Requirement	This solicitation requires registration with the System for Award Management (SAM) in order to be considered for award, pursuant to applicable regulations and guidelines. Registration information can be found at www.sam.gov . Registration must be "ACTIVE" at the time of award.
Commercial Items Terms and Conditions	The selected Offeror must comply with the following commercial item terms and conditions, which are incorporated herein by reference: FAR 52.212-1, Instructions to Offerors - Commercial Items, applies to this acquisition; FAR 52.212-3, Offeror Representations and Certifications - Commercial Items - the selected offeror must submit a completed copy of the listed representations and certifications; FAR 52.212-4, Contract Terms and Conditions - Commercial Items; FAR 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders-Commercial Items, paragraph (a) and the following clauses in paragraph (b): 52.222-21, 52.222-26, 52.222-35, 52.222-36, 52.222-37, 52.225-13, 52.232-34. The full text of the referenced FAR clauses may be accessed electronically at https://www.acquisition.gov/far/ .
Brand Name or Equal	All items are Brand Name or Equal and compatible to device
Wide Area Work Flow (WAWF) Contractor Instructions	Wide Area Workflow (WAWF) is a Web-based system that allows material receipt and acceptance reports (DD250), Invoices, and other payment-related documents to be created, processed and/or distributed electronically. WAWF has been imposed by the Defense Federal Acquisition Regulation Supplement (DFARS) 252.232-7003 and is the official repository for all payment requests, acceptance documents, and RFID data input. WAWF can be found at: https://wawf.eb.mil/ 1. How to use WAWF. Training can be found at http://www.wawftraining.com under "WAWF Contractor Getting Started Guide." This publication provides in-depth instructions for utilizing the WAWF system to submit your invoices electronically.
EVALUATION OF QUOTES - LOW PRICE TECHNICALLY ACCEPTABLE (LPTA)	In order to enhance the efficiency of the procurement process, the Government will evaluate vendors as either technically acceptable or unacceptable. The Government intends to evaluate only the lowest priced quote to determine if the quote is technically acceptable and whether the vendor has acceptable or neutral past performance. If the lowest priced quote is reasonably priced and technically acceptable and the vendor has acceptable or neutral past performance, the Government intends to make an award to that vendor and no other quote will be evaluated. If the lowest priced offer is not technically acceptable, the vendor does not have acceptable or neutral past performance, or both, then the Government will evaluate the second lowest priced quote for technical acceptability and acceptable or neutral past performance. This method will continue until the lowest priced, technically acceptable quote, by a vendor with acceptable or neutral past performance, is determined. Past performance will be evaluated using SAMS.gov and PPIRS. Quotes will be evaluated based on price and technical acceptability. Person providing the quote certifies that the product meets or exceeds all minimum requirements as stated in the Request for Quote.
Addendum to FAR Clause 52.212-4(a)	ADDENDUM TO FAR Clause 52.212-4(a) Inspection/Acceptance: The Contractor shall NOT make partial line item shipments against any resulting purchase order/contract issued as a result of this solicitation; e.g., if a line item on the contract reads - HOLSTERS, 184 each, the contractor shall NOT ship 50 holsters on one shipment, following by 100 holsters on a subsequent shipment and the final 34 holsters in still a third shipment. All items ordered on each line item in this contract shall be shipped at one time - no exceptions. Failure to adhere to this requirement will result in invoices being rejected in Wide Area Workflow and/or a delay in payment for non-conforming shipped quantities. Each and every container shipped under the authority of this contract shall bear the Government's contract number shown in Block 2 of the Standard Form 1449. The contract number shall be displayed clearly and be protected from damage during shipment. Failure to comply with this requirement could result in rejection of the shipment and the cost of return shipment to the point of origin being the sole responsibility of the contractor - no exceptions.

Shipping Information

City	State	Zip Code
APO	AE	09366

Need shipping estimates for other items? Use the shipping estimator below.

Need Freight Quotes?

FedBid has partnered with uShip, giving you more options for freight shipping, saving you time and money.

[Get free shipping quotes for your palletized or crated items here.](#)

Shipping Calculator

Category: Origin: [United States \(Change\)](#)
 Destination: [United States \(Change\)](#)

[Learn More](#)

Calculate

* Calculator is for estimates only. Prices subject to change.

Buy Attachment(s)

No.	Document Name	Document Size
1	shipping_instructions.docx	15440 KB





U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

August 25, 2014

Via Email

Gary Allen, Esq.
Senior Attorney
Procurement Law Division
Office of the General Counsel
U.S. Government Accountability Office
Washington, DC 20548
alleng@gao.gov

RE: B-410081 Protest of Latvian Connection, LLC

Dear Mr. Allen:

On July 14, 2014, Latvian Connection, LLC (Latvian), filed a protest with the U.S. Government Accountability Office (GAO) stating that the U.S. Department of State (State) failed to set aside Solicitation No. 3458493 BAS Parts for small businesses, excluded improperly Latvian from submitting a bid as a result of its “suspension” from FedBid,¹ failed to justify property its use of brand name only items, and discriminated against veteran-owned small businesses.

Your office has requested that the U.S. Small Business Administration (SBA) respond to the issue presented in the protest as they relate to the Small Business Act. For the following reasons, we believe the protest must be sustained.

FACTS

State issued a synopsis for Solicitation No. 3458493 BAS Parts on FedBizOpps on June 28, 2014 for spare and replacement parts for the United States Consulate General in Duibai, United Arab emirates. Agency Report (AR), Tab 6. On that same day, State posted the acquisition on FedBid’s reverse auction platform and set a closing date of July 28, 2014. AR, Tab 8. State posted its justification for the use of Honeywell parts as an attachment to the solicitation posted on FedBid. AR, Tab 9. The requirement was full and openly competed. AR, Tab 6. The solicitation states that it is FOB Destination Linden, NJ. Id. In fact, the solicitation states that it is “FOB Destination CONUS (CONTinental U.S.). Id. at 4. State received 5 quotations, all providing responsive bids. Contracting Officer’s Statement of Facts at ¶ 5. The quotes ranged from \$47,359.50 to \$54,895.70. Id.

¹ FedBid’s® website explains that it is “the fully managed online marketplace optimizing the way governments, businesses and educational institutions buy the goods and services they need.” See www.FedBid.com/about/.

In the meantime, on July 8, 2014, FedBid notified Latvian that its account was “suspended” in accordance with FedBid’s right to terminate services. Protest, Email dated July 8, 2014. According to the email, FedBid “suspended” Latvian’s account for the following reasons:

- System and Business Integrity: Latvian Connection has taken actions to repeatedly and purposely interfere with FedBid’s business relationships.
- Right to Terminate: Latvian Connection’s use of the FedBid marketplace demonstrates that Latvian Connection has not used (and does not intend to use) the FedBid marketplace as required in the FedBid Terms of Use.

Id.

ANALYSIS

1. Set Aside for Small Businesses

a. Nonmanufacturer Rule

In its protest, Latvian argues that the requirement should have been set-aside for small businesses. Specifically, Latvian argues that State was to have considered the statutory requirement that acquisitions with an estimated value below the simplified acquisition threshold “shall” be set-aside for small businesses. State, however, argues that it could not set-aside the requirement because bidders were required to provide the product of Honeywell, a large business. State believes that under all set-asides, a small business that does not manufacture the product being acquired must provide the product of a small business manufacturer (known as the nonmanufacturer rule), unless SBA has waived this requirement for the specific product (known as a class waiver). In this case, there was no such class waiver.

The agency, however, could have requested an individual waiver. SBA grants individual waivers for a product when a contracting officer determines “that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of a solicitation, including the period of performance.” 13 C.F.R. § 121.1203. If the SBA grants an individual waiver, the small business can provide the product of a large business. See id. § 121.406(b)(1)(iv). In the preamble to a proposed rule concerning the nonmanufacturer rule, SBA provided an example of when an individual waiver would be appropriate:

2. Example of an individual waiver. There are occasional instances when the government requires a brand-name product. For example, a government office may need to purchase computers which are compatible with computers already used in that office. If there is no compatible unit manufactured by a small business concern in the Federal market, the SBA may grant an individual waiver at the request of the contracting officer so that a small business offeror may provide a product manufactured by a large business for that particular procurement even though set aside for small businesses.

60 Fed. Reg. 27924 (May 26, 1995). To say, as State does in its legal memorandum, that this requirement cannot be set-aside due to the nonmanufacturer rule, is incorrect.

b. “Overseas” Requirements

State has also argued that this requirement cannot be set-aside for small businesses because the FAR and GAO rulings preclude the set-aside of overseas requirements. SBA does not agree with this assertion for the following reasons.

First, this requirement is not an “overseas” requirement. It clearly states in the solicitation that it is FOB Destination Linden, New Jersey. FOB Destination means that the bidder must deliver the supplies to the specific delivery point free of expense to the Government. FAR 47.303-6, “F.o.b. Destination”. In this case, the destination is a city and state in the United States. This is clearly not an “overseas” requirement.

Second, The Small Business Act states the following with respect to proposed acquisitions valued below the simplified acquisition threshold:

(j) Small business reservation

(1) Each contract for the purchase of goods and services that has an anticipated value greater than \$2,500 but not greater than \$100,000² shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

15 U.S.C. § 644 (emphasis added). Both the FAR and SBA have codified this statutory mandate in regulations. For example, SBA’s regulations state:

(f) Contracting Among Small Business Programs. (1) Acquisitions Valued At or Below the Simplified Acquisition Threshold. The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns

² The Small Business Act states that small business set asides are mandatory for the acquisition of supplies and services valued from \$2,500 to \$100,000. 15 U.S.C. § 644(j)(1). However, the FAR Council has implemented an inflationary adjustment pursuant to 41 U.S.C. § 431a and the FAR now states that “Before setting aside an acquisition under this paragraph, refer to 19.203(b). Each acquisition of supplies or services that has an anticipated dollar value exceeding \$3,000 (\$15,000 for acquisitions as described in 13.201(g)(1)), but not over \$150,000, (\$300,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at 2.101), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery.” 48 C.F.R. § 19.502-2(a).

that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from making an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

13 C.F.R. § 125.2 (emphasis added). The FAR states that “Small business set-asides have priority over acquisitions using full and open competition. See requirements for establishing a small business set-aside at subpart 19.5.” FAR § 19.203(e).

State argues that the GAO decision of Latvian Connection General Trading and Construction LLC, B-408633, Sept. 18, 2013, 2013 CPD ¶ 224, applies here. In that case, GAO ruled that FAR 19.000(b) limits the application of FAR part 19 (dealing with SBA’s small business programs) to acquisitions conducted in the United States (and its outlying areas). We believe the basis for GAO’s ruling was that SBA’s regulations were silent on this issue and therefore, the more specific FAR regulation controlled.

Heeding this advice, SBA recently promulgated regulations to address this issue. Specifically, SBA made wholesale changes to 13 CFR § 125.2 on October 2, 2013. As a result, SBA issued a final rule stating that: “Small business concerns must receive any award (including orders, and orders placed against Multiple Award Contracts) or contract, part of any such award or contract, and any contract for the sale of Government property, regardless of the place of performance, which SBA and the procuring or disposal agency determine to be in the interest of:..” 13 C.F.R. § 125.2(a)(emphasis added). Likewise, the rule also states that: “The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors and subcontractors in the contracting opportunities of the Government regardless of the place of performance of the contract.” Id. 125.2(c)(emphasis added).

Therefore, SBA’s policy and legal interpretation of the Small Business has been incorporated into regulations. In sum, according to statute and regulations, small business set asides, regardless of place of performance, are mandatory for acquisitions valued from \$3,000 to \$150,000.³

Third, State issued regulations specifically addressing this issue. In a proposed rule, State explained:

DOSAR 619.000 is added to formalize the Department's policy regarding the application of the Small Business Act to contracts awarded by domestic contracting activities (i.e., those located in the United States) where contract performance takes place overseas. Currently, FAR 19.000(b) states that part 19, with the exception of subpart 19.6, applies ‘only in the United States or its outlying areas.’ This language is ambiguous and subject to interpretation. While the application is clear with respect to contracts both awarded and performed in the United States (it applies) and to contracts both awarded and performed outside

³ SBA notes that it has submitted other memos to GAO concerning the issue of application of the Small Business Act to overseas procurements. Rather than repeat those legal arguments, we adopt those memos here.

the United States (it does not apply), the gray area is its applicability to contracts awarded by contracting offices located in the United States but where contract performance takes place overseas. The Department has subsequently followed an informal policy of applying part 19 to such contracts. This DOSAR change, therefore, states this policy in explicit terms.

69 Fed. Reg. 76660 (Dec. 22, 2004). State received at least one comment disagreeing with its proposed rule, as follows:

1. Comment: One commentator disagreed that the language of FAR 19.000(b) is ambiguous, and questioned the Department's policy of applying the Small Business Act to contracts awarded domestically and performed overseas. The commentator pointed out that no other agency has made such an interpretation. Response: Nonconcur. The Department does consider the language of FAR 19.000(b), which states that FAR Part 19, with the exception of Subpart 19.6, applies 'only in the United States or its outlying areas', to be ambiguous. The application of the Small Business Act to contracts awarded domestically for performance overseas has been a longstanding practice at the Department of State; this rule merely formalizes that practice.

71 Fed. Reg. 34836, 34837 (June 16, 2006). Further, one commenter questioned "the practicality of the proposed rule, citing the requirement for subcontracting plans and goals and questioning how goals will be negotiated." *Id.* at 34837. Specifically, the commenter questioned how an agency could reconcile these small business subcontracting goals with U.S. treaty obligations and the frequent U.S. foreign policy goal of requiring U.S. contractors to use host country businesses and resources. *Id.* State responded by noting that this policy was not new and in fact,

the Department has not experienced difficulties in implementing this policy. FAR 19.702(b) states that subcontracting plans are not required for contracts that will be performed entirely outside of the United States, so contracts that are performed overseas are already exempted from the subcontracting plan requirements. Additionally, the Omnibus Diplomatic Security and Antiterrorism Act (Public Law 99-399) stipulates that ten percent of the monies appropriated for diplomatic security should, to the extent practicable, be awarded to minority owned business concerns, and another 10 percent to small businesses. In making any set-aside recommendations, A/SDBU takes into account all of the issues raised by the commentator, including any limitations that foreign governments may impose. No change to the rule is therefore necessary.

Id. Consequently, in the final rule, State promulgated the following regulation:

It is the Department's policy to provide maximum opportunities for U.S. small businesses to participate in the acquisition process. DOS contracts that are awarded domestically for performance overseas shall be subject to the Small Business Act as a matter of policy. Contracts that are both awarded and performed overseas should comply on a voluntary basis.

48 C.F.R. § 619.000.

As a result of the foregoing, State should have provided maximum opportunities to small businesses to participate and failed to do so.

2. Exclusion of Latvian

State admits that Latvian was excluded from this competition but holds that full and open competition is not required in simplified acquisitions and that FedBid's determination to exclude Latvian is not a protestable action by the contracting officer for this acquisition and is not related to the acquisition in any way. We disagree.

First, State has utilized a contractor to perform acquisition services on behalf of State. Any actions by the contractor are imputed to State. In this case, FedBid precluded Latvian from submitting a bid, and the contracting officer for State tacitly accepted this decision, which means that State precluded Latvian from submitting a bid. This is not a case where Latvian submitted a bid and it was rejected – Latvian was completely excluded from bidding at all. FedBid and State excluded Latvian from bidding for “integrity” reasons. Specifically, FedBid informed Latvian that it did not meet FedBid's Terms of Use, including: “System and Business Integrity: Latvian Connection has taken action to repeatedly and purposely interfere with FedBid's business relationships.” Protest, Email dated July 8, 2014 (emphasis added).

Second, when a small business is denied the opportunity to compete for integrity reasons, the matter must be referred to SBA for a Certificate of Competency. The Small Business Act provides in pertinent part that SBA is “empowered, whenever it determines such action is necessary:”

to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence, preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

15 U.S.C. § 637(b)(7)(A) (emphasis added). Although SBA generally receives such referrals when a small business is the apparent successful offeror, SBA's regulations acknowledge that a contracting officer must refer a small business to SBA for a possible Certificate of Competency (COC) when the contracting officer:

(ii) Refuses to consider a small business concern for award of a contract or order after evaluating the concern's offer on a non-comparative basis (e.g., a pass/fail, go/no go, or acceptable/unacceptable) under one or more responsibility type

evaluation factors (such as experience of the company or key personnel or past performance); or

(iii) Refuses to consider a small business concern for award of a contract or order because it failed to meet a definitive responsibility criterion contained in the solicitation.

(3) A small business offeror referred to SBA as nonresponsible may apply to SBA for a COC. Where the applicant is a non-manufacturing offeror on a supply contract, the COC applies to the responsibility of the non-manufacturer, not to that of the manufacturer.

13 C.F.R. § 125.5(a)(2). These regulations codify GAO rulings on the issue – the issue of when an agency rejects a bid or determines a proposal is unacceptable for reasons relating to responsibility. In those cases, the matter must be referred to SBA for a COC. GAO has explained that:

A contracting agency cannot—merely by the terms of a solicitation—change a matter of responsibility into one of responsiveness. Raymond Engineering, Inc., B-211046, July 12, 1983, 83-2 CPD ¶ 83. Responsibility refers to the bidder's apparent ability and capacity to perform all of the contract requirements; responsiveness concerns whether a bidder has unequivocally offered to provide supplies or services in conformity with the material terms and conditions of the solicitation. See Skyline Credit Corp., B-209193, May 15, 1983, 83-1 CPD ¶ 257.

DAVSAM International, Inc., B-218201, B-218201.3, April 22, 1985, 85-1 CPD ¶ 462. In this case, the terms of the solicitation are that “Buyers and Sellers agree to conduct this transaction through FedBid in compliance with the FedBid Terms of Use. Failure to comply with the below terms and conditions may result in offer being determined non-responsive.” AR, Tab 8. FedBid notified Latvian that its account was “suspended” in accordance with their right to terminate services, terminated them based on “business integrity” and that Latvian has not used the marketplace as required in the FedBid Terms of Use. As a result, State, through its contractor/agent FedBid, by terms of the solicitation, changed a matter of responsibility into one of responsiveness. This violates the Small Business Act since the matter should have been referred to SBA for a COC.⁴

In addition, we believe this is also similar to where an agency rejects a bid based on a pre-award survey. In Sierra Engineering, the GAO sustained a protest where the agency rejected a bid based on a negative pre-award survey of Sierra's facility and the agency admitted in the report that this was actually a matter of responsibility that should have been referred to SBA for a COC. Sierra Engineering, B-237820, Jan. 16, 1990, 90-1 Comp. Gen. Proc. Dec. ¶ 58. Likewise, in Propper Manufacturing Co., Inc., B-208035, March 22, 1983, 83-1 Comp. Gen. Proc. Dec. ¶ 279, the GAO ruled that the contracting officer's rejection of protester's bid was a nonresponsibility determination. Although the contracting officer's rejection was derived from

⁴ We note that when a matter is referred to SBA for a COC, the offeror seeking a COC must demonstrate that it is “eligible for a COC, [and] must qualify as a small business under the applicable size standard in accordance with part 121 of this chapter.” 13 C.F.R. § 125.5(b). Therefore, even if State believed Latvian were not a small business, it cannot make that determination – SBA makes that determination.

the Food and Drug Administration's (FDA's) statement that it could not recommend the protester for award, the FDA recommendation was not binding on the contracting officer. GAO stated that: "While the DLA contracting officer contends that he could not have found Proper responsible without supplanting the FDA's statutory authority, we do not believe this to be the case. FDA did not find or recommend that the protester's product be considered unacceptable under the FDC Act. This determination was made by the DLA contracting officer, and reflects his interpretation of the meaning of FDA's statement that insufficient data was available to permit a favorable recommendation." The same is true here. State's rejection of Latvian was a determination made by the State contracting officer, based on the recommendations of its agent/contractor FedBid, which he/she did not have to accept, but did. State's decision was a determination of nonresponsibility that should have been referred to SBA.

Finally, we believe that this exclusion from bidding is a de facto suspension or debarment from contracting.⁵ A de facto suspension or debarment occurs when there are "repeated determinations of nonresponsibility or a long-term attempt by an agency to preclude a company from competing for government contracts See Old Dominion Dairy Prods., Inc. v. Secretary of Defense, 631 F.2d 953 (D.C. Cir. 1980). Such actions require that the party being debarred must be afforded procedural due process, including notice and an opportunity to be heard on the basis for debarment. See FAR § 9.406-3; Frank Cain & Sons, Inc. -- Request for Recon., B-236893.2, June 1, 1990, 90-1 CPD ¶ 516; Deloitte Haskins & Sells, B-222747, July 24, 1986, 86-2 CPD ¶ 107." Keeson, Inc.; Ingram Demolition, Inc., Nos. B-245625; B-245655, Jan. 24, 1992, 92-1 Comp. Gen. Proc. Dec. ¶ 108. In Keeson, GAO ruled that the exclusion of any offeror charged with violating asbestos regulations constituted a significant restriction on the field of competition since this exclusion applied without any consideration of the validity of the allegations and could not be waived. Id. As a result, the exclusion applied to an offeror "even after a binding determination that the allegations were without merit." Id. This restriction on competition is tantamount to a de facto suspension or debarment. Id.


Here, Latvian is precluded from bidding on any acquisition where an agency uses FedBid. This is a repeated determination of nonresponsibility or a long-term attempt by all agencies to preclude Latvian from competing. Further, Latvian is being excluded by State without any consideration as to the validity of the allegations by FedBid. This is a restriction of competition tantamount to a de facto suspension or debarment.

⁵ Formal suspension and debarment procedures are set forth in FAR subpart 9.4 and provide contractors with certain due process rights.

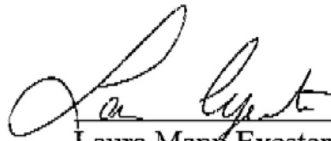
CONCLUSION

Based on the foregoing, we believe that the protest must be sustained.

Respectfully submitted,



John W. Klein
Associate General Counsel
for Procurement Law
U.S. Small Business Administration



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GallagherDJ@state.gov

Keven L. Barnes

From: Keven L. Barnes <keven.barnes@latvianconnectionllc.com>
Sent: 02 September, 2015 3:16 PM
To: 'Protests'
Cc: Wilder, Charles J II CIV USARMY 408 CONTR SPT BDE (US) (charles.j.wilder.civ@mail.mil); 'phillip.w.christy.mil@mail.mil'; 'Prado, Manuel MAJ USARMY 408 CONTR SPT BDE (US)'; 'Osborne, Sharon L CIV (US)'; 'Haque, Mohammed N CIV USARMY 408 CONTR SPT BDE (US)'; Commissioner@FairnessInProcurement.org
Subject: Pre Award Protest against the DEPARTMENT OF THE ARMY SOLICITATION W912D1-15-Q-0097 -Printer Toner/Fuser VIOLATION OF SMALL BUSINESS ACT
Attachments: EXHIBIT 1 75--Printer Toner_Fuser - W912D1-15-Q-0097 - Federal Business Opportunities_ Opportunities.pdf; EXHIBIT 1 FEDBIDBuy View W912D1-15-Q-0097.pdf; PRE-AWARD GAO PROTEST AGAINST DEPARTMENT OF ARMY VIOLATING SMALL BUSINESS ACT DEFECTIVE SOLICITATION W912D1-15-Q-0097.pdf; EXHIBIT 13 Latvian - SMALL BUSINESS ADMINISTRATION LEGAL OPINION \$ 3,000 - \$ 150,000 MANDATORY SET ASIDES.pdf

Latvian Connection LLC
Al Shareefa Complex, 5th FL
Kuwait City, Kuwait
Tel: 707 385 9344

SEPT 2, 2015

BY REGISTERED EMAIL

General Counsel
Government Accounting Office
441 G Street, NW
Washington DC 20548
Email: Protests@gao.gov

Attn: Procurement Law Control Group, Room 1139

RE: **Pre Award Protest against the DEPARTMENT OF THE ARMY
SOLICITATION W912D1-15-Q-0097 -Printer Toner/Fuser
FAILING TO SET ASIDE SOLICITATION WITH VALUE OF \$ 3,000 - \$ 150,000**

Dear Procurement Law Group:

Latvian Connection LLC, ("LC LLC") A U.S. SMALL BUSINESS SAM REGISTERED with **DUNS: 534749622** CAGE **SGM59**, submits this PRE- AWARD Protest against the: **Department of ARMY** for not setting aside solicitation for U.S. Small Businesses exclusively and violating the Small Business Act.

State argues that the **GAO decision of Latvian Connection General Trading and Construction LLC, B-408633**, Sept. 18, 2013 CPD ¶ 224, applies here. In that case, GAO ruled that FAR 19.000(b) limits the application of FAR part 19 (dealing with SBA's small business programs) to acquisitions conducted in the United States (and its outlying areas). We believe the basis for the GAO's ruling was that SBA's regulation were silent on this issue and therefore, the more specific far regulations controlled.

Heeding this advice, the SBA recently promulgated regulations to address this issue. Specifically, SBA made wholesale changes to 13 CFR § 125.2 on October 2, 2013. As a result, SBA issued a final rule stating that: “Small business concerns must receive any award (including orders, and orders placed against Multiple Award Contracts) or contract, part of any such award or contract, and any contract for the sale of Government property, regardless of the place of performance, which the SBA and the procuring or disposal agency determine to be in the interest of:” 13 C.F.R. § 125.2(a)(emphasis added). Likewise, the rule also states that: “Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors and subcontractors in the contracting opportunities of the Government regardless of the place of performance of the contract.” Id. 125.2 (c)(emphasis added).

Therefore, SBA’s policy and legal interpretation of the Small Business has been incorporated into the regulations. In sum, according to statute and regulations, small business set asides, regardless of place of performance, are mandatory for acquisitions valued from \$ 3,000 to \$ 150,000 We request you invite the SBA to comment please. (EXHIBIT 13)

¹ In accordance with 4 C.F.R. § 21.1 (c) (1), the relevant electronic mail address for this protest is keven.barnes@LatvianConnectionLLC.com (Representative for the Protester Latvian Connection General Trading and Construction LLC) KUWAIT **DUNS: 534749622** CAGE **SGM59**

² The Contracting Office for this procurement is CAMP ARIFJAN KUWAIT 408th CSB SWA Kuwait Contracting Command and 761st Tank Bat, Fort Hood, TX 76544
Per FAR 33.103 Protests to the agency

INTERESTED PARTY STATUS

Our company is a U.S. Small Business and we will have a reasonable chance of winning the Contract if we are competing against ONLY other U.S. Small Businesses. Therefore, LATVIAN CONNECTION LLC is an actual offeror whose direct economic interest is affected by the award of the Contract and hence, an interested party. 31 U.S.C. § 3551 (2000); FAR 33.101; 4 C.F.R. § 21.0(a)(2006); Designer Assoc. , Inc.,B-293226, FEB 12, 2004 C.P.D. ¶ 114 at 2. We are located in Kuwait and LOCAL to Kuwait and Camp Arifjan. The U.S. Army are using a United States contracting office address.

Contracting Office Address :

1001 761st Tank Bat, Fort Hood, TX 76544 (Exhibit 1)

TIMELINESS OF THIS PROTEST

This is a PRE-Award Protest filed before the bid due in date of **Sept 9, 2015**. (Exhibits 1)

§ 21.2 Time for filing:

(a)(1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.

(2) Protests other than those covered by paragraph (a)(1) of this section shall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier), with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held. This pre award protest is filed before bid due in date of **09 SEPT 2015**.

FACTUAL GROUNDS OF THE PROTEST

The solicitation **W912D1-15-Q-0097** was posted on 01 SEPT 2015 with a bid due in date of 09 SEPT 2015 and was not set aside for U.S. Small Businesses exclusively. (Exhibit 1) and this solicitation has a value of between \$ 3,000 and \$ 150,000.

Request of a ruling by the Comptroller General of the United States

LATVIAN CONNECTION LLC specifically requests that the GAO recommend that the solicitation **W912D1-15-Q-0097** be conducted as a Lowest Priced, Technically Acceptable solicitation on www.fbo.gov and be reserved for U.S. Small Businesses exclusively.

The GAO stated in B-410981:

RECOMMENDATION: We recommend that the agency revise the ground rules of the procurement to conduct the competition in a manner consistent with the Small Business Act and other procurement laws and regulations

REQUEST FOR HEARING OR CONFERENCE AND PROTECTIVE ORDER

If the issues in this case cannot be resolved on the basis of the documents requested, then LATVIAN CONNECTION LLC requests a hearing on all of the matters set forth above. 4 C.F.R. § 21.1 (d)(2008). Latvian Connection LLC does not request a protective order. *GAO - WE EXPRESSLY REQUEST THAT THIS PROTEST NOT BE EXPIDITED.*

LEGAL GROUNDS OF PROTEST

State argues that the **GAO decision of Latvian Connection General Trading and Construction LLC, B-408633**, Sept. 18, 2013 CPD ¶ 224, applies here. In that case, GAO ruled that FAR 19.000(b) limits the application of FAR part 19 (dealing with SBA's small business programs) to acquisitions conducted in the United States (and its outlying areas). We

believe the basis for the GAO's ruling was that SBA's regulation were silent on this issue and therefore, the more specific far regulations controlled.

Heeding this advice, the SBA recently promulgated regulations to address this issue. Specifically, SBA made wholesale changes to 13 CFR § 125.2 on October 2, 2013. As a result, SBA issued a final rule stating that: "Small business concerns must receive any award (including orders, and orders placed against Multiple Award Contracts) or contract, part of any such award or contract, and any contract for the sale of Government property, regardless of the place of performance, which the SBA and the procuring or disposal agency determine to be in the interest of:" 13 C.F.R. § 125.2(a)(emphasis added). Likewise, the rule also states that: "Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors and subcontractors in the contracting opportunities of the Government regardless of the place of performance of the contract." Id. 125.2 (c)(emphasis added).

Therefore, SBA's policy and legal interpretation of the Small Business has been incorporated into the regulations. In sum, according to statute and regulations, small business set asides, regardless of place of performance, are mandatory for acquisitions valued from \$ 3,000 to \$ 150,000

REQUEST FOR DOCUMENTS

LATVIAN CONNECTION LLC LLC requests that the following materials be included in the agency report, pursuant to 4 C.F.R. § 21.1(d)(2008):

- Copy of Pre-Solicitation Notice
- Copy of Small Business Coordination Record DD FORM 2579 FOR KUWAIT
- Copy of the Bid Abstract
- Copy of the Amendment Amending the solicitation for any reason
- Copy of all unsuccessful offeror letters or notice of awards for the subject solicitation

REQUEST FOR RELIEF AND CONCLUSION

LATVIAN CONNECTION LLC requests that the Agency take corrective action and issue an Amendment, that is posted on www.fbo.gov and that this solicitation as a Lowest Priced, Technically Acceptable solicitation that is reserved for U.S. Small Business concerns exclusively.

We also request that **Latvian Connection LLC** be reimbursed the costs of filing and pursuing its protest, including reasonable protest preparation fees. Bid Protest Regulations 4 C.F.R. § 21.8(d)(1) (2010).

Under the Competition in Contracting Act of 1984, the GAO may recommend that protest costs be reimbursed where they find that an agency's action violated a procurement statute or regulation. 31 U.S.C. § 3554(c)(1) (2010).

The GAO's Bid Protest Regulations provide that, where the contracting agency decides to take corrective action in response to a protest, the GAO may recommend that the protester be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(e) (2010). The GAO has stated that it "does not mean that costs should be reimbursed in every case in which an agency decides to take corrective action; rather, a protester should be reimbursed its costs where an agency unduly delayed its decision to take corrective action in the face of a clearly meritorious protest. Griner's-A-One Pipeline Servs., Inc.--Costs, B-255078.3, July 22, 1994, 94-2 CPD ¶ 41 at 5.

Respectfully submitted,

/// SIGNED ///

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