



## Decision

**Matter of:** Med-South, Inc.

**File:** B-401214

**Date:** May 20, 2009

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Brett Adair, Esq., Carlson & Adair, LLC, for the protester.  
Natica L. Chapman, Esq., Department of Veterans Affairs, and Sam Q. Le, Esq., Small Business Administration, for the agencies.  
Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency's decision to set aside a procurement for small businesses is reasonable where the agency performed market research that demonstrated a reasonable likelihood that the agency would receive offers from two or more responsible contractors at a fair and reasonable price, the agency consulted with the Office of the Small Disadvantaged Business Utilization, and the agency received three offers from small businesses in response to the solicitation.

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### DECISION

Med-South, Inc., of Birmingham, Alabama protests the decision of the Department of Veterans Affairs (VA) to issue request for proposals (RFP) No. VA-247-09-RP-0121 as a small business set-aside.

We deny the protest.

The RFP, issued as a small business set-aside, sought home oxygen supplies and services for veterans in Alabama and neighboring counties in Mississippi. The solicitation contemplated the award of a fixed price contract for a base year with four 1-year option periods. The anticipated contract was valued at \$4.5 million.

Med-South<sup>1</sup> protests the solicitation, arguing that the agency should not have set aside the procurement for small businesses.

Under Federal Acquisition Regulation (FAR) § 19.502-2(b), a procurement with an anticipated dollar value of more than \$100,000, such as the one here, must be set aside exclusively for small business participation when there is a reasonable expectation that offers will be received from at least two responsible small business concerns and that award will be made at a fair market price. The use of any particular method of assessing the availability of small businesses is not required so long as the agency undertakes reasonable efforts to locate responsible small business competitors. National Linen Serv., B-285458, Aug. 22, 2000, 2000 CPD ¶ 138 at 2. The decision whether to set aside a procurement may be based on an analysis of factors such as the prior procurement history, the recommendations of appropriate small business specialists, and market surveys that include responses to sources sought announcements. Commonwealth Home Health Care, Inc., B-400163, July 14, 2008, 2008 CPD ¶ 140 at 3; National Linen Serv., *supra*, at 2. Because a decision whether to set aside a procurement is a matter of business judgment within the contracting officer's discretion, our review generally is limited to ascertaining whether that official abused his or her discretion. Admiral Towing and Barge Co., B-291849, B-291849.2, Mar. 6, 2003, 2003 CPD ¶ 164 at 3-4. We will not question a small business set-aside determination where the record shows that the evidence before the contracting officer was adequate to support the reasonableness of the conclusion that small business competition reasonably could be expected. Commonwealth Home Health Care, Inc., *supra*, at 3.

Med-South contends that the VA's market research was inadequate and does not demonstrate that at least two small businesses can satisfy the RFP's requirements. However, our review confirms both the adequacy of the market research and the reasonableness of the agency's decision to set aside the procurement for small businesses. In this regard, the record shows that the contracting officer surveyed the market by searching established databases to identify small businesses in the industry, researched those firms, and sought the advice of the Office of the Small Disadvantaged Business Utilization (OSDBU). The contracting officer also reviewed GAO bid protest decisions challenging similar solicitations for home oxygen, including one where the GAO upheld the decision to set aside the procurement for small business. Based on this information, the contracting officer concluded, and the OSDBU concurred, that the VA would likely receive offers from at least two small businesses that were capable of performing the work at a fair and reasonable price. We note, also, that the VA reports that it received offers from three small businesses in response to the solicitation. Agency Report at 3.

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<sup>1</sup> Med-South, a large business contractor, previously performed this work under a contract that was competed on a full and open basis.

Based on this market research, we find the agency's decision to set aside the procurement for small businesses to be reasonable.<sup>2</sup> While the protester argues that the agency should have verified the capabilities of the small businesses identified as potential offerors, it has not provided any credible evidence to show that the market research was inadequate or flawed.<sup>3</sup>

The protest is denied.

Daniel I. Gordon  
Acting General Counsel

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<sup>2</sup> Our Office sought the views of the Small Business Administration (SBA) in response to the protest. The SBA concurred that the solicitation was properly set aside for small business.

<sup>3</sup> In its comments, the protester alleged, "upon information and belief," that the three offerors that responded to the solicitation cannot meet a solicitation requirement to be "established" in the state of Alabama and cannot comply with the "non-manufacturing rule" requirement. However, the protester has provided no evidence to support these contentions. Bare allegations on information and belief, without evidence or explanation, are insufficient to establish a cognizable protest ground. View One, Inc., B-400346, July 30, 2008, 2008 CPD ¶ 142 at 3; see 4 C.F.R. § 21.5(f) (2008) (protests that lack a detailed statement of the legal and factual grounds of protest shall be dismissed). While the protester asserts that it needs information that it has requested under the Freedom of Information Act (FOIA) to fully respond to the agency's report, the report contained relevant documentation concerning the issues raised by the protester; if the protester believed more documents relevant to this protest should have been provided by the agency, it should have requested any further relevant documents that it thought might exist under sections 21.3(c) and (g) of our Bid Protest regulations, not FOIA.