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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

## **Decision**

**Matter of:** Rice Services, Inc.

**File:** B-411540; B-411540.2

**Date:** August 20, 2015

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William R. Purdy, Esq., and Aron C. Beezley, Esq., Bradley Arant Boult Cummings LLP, for the protester.

Allen Lotz, Esq. and William H. Butterfield, Esq., Department of Homeland Security, United States Coast Guard, for the agency.

Susan K. McAuliffe, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest challenging agency's decision not to set aside procurement for small businesses is denied where agency's market research demonstrated that agency was not likely to receive proposals from at least two small businesses capable of performing the required services.

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### **DECISION**

Rice Services, Inc., of Smithville, Tennessee, protests the terms of request for proposals (RFP) No. HSCG84-15-R-AA1441, issued by the Department of Homeland Security for full food service at the United States Coast Guard Academy in New London, Connecticut. Rice contends that the agency is required to set the procurement aside exclusively for small businesses.

We deny the protest.

### **BACKGROUND**

To assess commercial sources' capability to meet the Coast Guard Academy's full food service requirements, the agency posted a Sources Sought notice on the FedBizOpps website on November 18, 2013. The notice informed potential offerors of the requirements for the collegiate facility, which included, among others things, formal, family-style, and buffet-style food service, as well as special event and medical clinic dining. Contracting Officer (CO) Statement at 1-3; Sources Sought Notice, Nov. 18, 2013, at 1.

The Sources Sought notice invited interested firms to demonstrate their capability by submitting information demonstrating corporate experience of 5 or more years of “ongoing (currently in progress) business management/corporate experience in managing food service programs of comparable size and complexity of the U.S. Coast Guard Academy.” Sources Sought Notice at 2. Six large businesses and seven small businesses responded. CO Statement at 3. The agency evaluated the responses and determined that the small businesses had failed to demonstrate relevant experience in a collegiate environment and in formal events. Market Research Memo at 13.

The contracting officer conducted additional market research by reviewing the acquisition history for these services. The procurement history revealed that large businesses had performed the work since 1988. Additionally, no small business submitted an acceptable proposal for the last procurement of the services. CO Statement at 2. The contracting officer concluded there was no reasonable expectation of receiving acceptable offers from two or more small businesses at fair market prices, and that the procurement should be solicited on an unrestricted basis. *Id.*; CO Statement at 2-3. This determination was approved by both the agency’s small business specialist and the Small Business Administration’s (SBA) Procurement Center Representative (PCR).<sup>1</sup> Memorandum of Law at 2. The RFP was issued on April 30 on an unrestricted basis. On May 15, prior to the closing date for receipt of proposals, Rice protested to our Office.

## DISCUSSION

Rice alleges that the agency improperly failed to set aside the procurement for small businesses. The firm contends that the agency’s review of its capability is inaccurate and does not support the determination to issue the solicitation on an unrestricted basis.

Acquisitions with an anticipated dollar value of more than \$150,000, such as here, must be set aside for exclusive 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. Federal Acquisition Regulation (FAR) § 19.502-2(b); Information Ventures, Inc., B-400604, Dec. 22, 2008, 2008 CPD ¶ 232 at 3. The

<sup>1</sup> Our review of the record confirms that although an SBA representative initially questioned the unrestricted status of the procurement, his challenge was promptly withdrawn after he learned that a different SBA PCR had reviewed and approved the unrestricted nature of the procurement. *Id.* at 3.

decision whether to set aside a procurement may be based on an analysis of factors such as the prior procurement history, the advice of appropriate small business specialists, and market surveys that include responses to sources sought announcements. Commonwealth Home Health Care, Inc., B-400163, July 24, 2008, 2008 CPD ¶ 140 at 3.

In determining the availability of responsible small business concerns for set-aside purposes, expressions of interest from small businesses are not necessarily determinative; an agency's investigation is to consider not only the existence of the small businesses, but also their capability to perform the contract. Information Ventures, Inc., B-279924, Aug. 7, 1998, 98-2 CPD ¶ 37 at 3. Since the determination of whether there is a reasonable expectation of receiving offers from two or more small businesses that are capable of performing the required work is a matter of business judgment within the contracting officer's discretion, we will not disturb it absent a showing that it was unreasonable. ViroMed Labs., B-298931, Dec. 20, 2006, 2007 CPD ¶ 4 at 3-4.

We have reviewed each of the protester's allegations and conclude that none provides a basis to question either the adequacy of the market research or the reasonableness of the agency's determination to conduct the procurement on an unrestricted basis. To the extent Rice contends that the presence of two small businesses at the site visit should have placed the agency on notice of small business interest in the requirement, the determinative issue is not whether the agency was on notice of small business interest in the requirement; rather, as noted above, it is whether the agency was aware of interest on the part of small businesses capable of performing the work, which mere presence at the site visit fails to establish.

Further, while, in its comments on the agency report, the protester challenges the agency's conclusion regarding its own lack of relevant experience, Rice does not dispute the agency's findings pertaining to the lack of experience of any other small business source. As a result, regardless of the reasonableness of the agency's conclusions regarding the protester's relevant experience, Rice has failed to demonstrate that the contracting officer lacked a reasonable basis for concluding

that offers from at least two capable small businesses could not reasonably be expected.<sup>2</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>2</sup> Rice also contends that the agency's determination that Rice had not demonstrated the capability to perform the anticipated requirement was a nonresponsibility determination that should have been referred to the SBA for a Certificate of Competency (COC). As the agency points out, however, an adverse responsibility determination was not made during the market research, and Rice was not excluded from competing for an award. Moreover, FAR Subpart 19.6, which addresses COC referrals, provides for the referral to SBA of only "apparent successful" small business offerors found to be nonresponsible. FAR § 19.601(c). Rice had not been determined to be the apparent successful offeror at the time it submitted the instant protest. Accordingly, the protester's contention fails to constitute a valid basis of protest; the firm has not demonstrated a likelihood that the agency has violated applicable regulations. 4 C.F.R. § 21.5(f).