



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Kingdomware Technologies; SDV Security, LLC

**File:** B-406122; B-406122.2

**Date:** February 13, 2012

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LaTonya Barton for Kingdomware Technologies; John H. Wray for SDV Security, LLC, the protesters.

Capt. S.J. McGuigan, United States Marine Corps, for the agency.

Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency was required to set aside solicitation for service-disabled veteran-owned small businesses is denied where agency reasonably estimated the value of the procurement as below the simplified acquisition threshold and properly set the solicitation aside for small business concerns.

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### DECISION

Kingdomware Technologies and SDV Security, LLC protest the terms of request for quotations (RFQ) No. M67001-12-Q-0020, issued by the United States Marine Corps for web-based mass emergency notification services. The protesters contend that the agency improperly failed to set the procurement aside for service-disabled veteran-owned small business concerns (SDVOSB).

We deny the protest.

The RFQ, issued on October 21, 2011 under a combined synopsis/solicitation, was issued as a small business set-aside for the procurement of "Mass Emergency Notification Service for Marine Corps Base Camp Lejeune." Agency Request for Dismissal, at 1. Prior to the solicitation closing date, Kingdomware contacted the agency to learn why the solicitation had not been set aside for SDVOSBs. The agency advised Kingdomware that a small business set-aside was appropriate since the anticipated dollar value of the procurement did not exceed the simplified acquisition threshold of \$150,000, established by Federal Acquisition Regulation § 2.101. Thereafter, the protesters filed the subject protest challenging the agency's set-aside decision.

The protesters, both SDVOSB firms, argue that the agency's estimate of the dollar value of the procurement is unreasonable--they contend that the estimated value of the procurement should have been in excess of \$150,000. Accordingly, the protesters maintain that the agency was required to first consider a SDVOSB set-aside before issuing the solicitation as a small business set-aside. See 13 C.F.R. § 125.19(b)(2); Federal Acquisition Regulation (FAR) § 19.203(c) (establishing that a contracting officer "shall first" consider setting aside a procurement for 8(a), HUBZone, SDVOSB, or woman-owned small business concerns, where the acquisition has a value above the simplified acquisition threshold (\$150,000)).<sup>1</sup> As discussed below, we have no basis to question the reasonableness of the agency's estimated value of the procurement; thus, the protesters' contention that the agency should have first considered setting aside the solicitation for SDVOSB firms is without merit.<sup>2</sup>

The record reflects that in calculating the anticipated value of the current procurement, the agency considered the value of the prior delivery order for these services, which was issued in 2008 for \$160,170, and concluded that this follow-on procurement had an estimated value of less than \$150,000 based on several factors.<sup>3</sup> Specifically, the agency identified market changes and changes in requirements which would drive down costs. In this regard, for instance, the agency noted that a caller identification function, which was considered a special feature in 2008, which drove up costs, is now an industry standard. In addition, the current solicitation does not allow for training-related travel costs, it deleted certain start-up data compilation work, and it reduced from 70,000 to 60,000 the number of minutes

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<sup>1</sup> Agencies are required to set aside acquisitions valued at or below the simplified acquisition threshold for small businesses where the agency expects to receive fair and reasonable offers from two or more small business concerns, although 8(a), HUBZone, SDVOSB, and woman-owned small business set-asides are not "precluded." 13 C.F.R. § 125.19(b)(1); FAR § 19.203(b).

<sup>2</sup> To the extent the protesters generally contend that because they advised the agency of their interest in the procurement, the agency was required to conduct additional market research to support a SDVOSB set aside, the protesters fail to provide legal support for their position. Additionally, the agency reports that, at least at the time of its market research, neither firm was registered under the required North American Identification Classification System (NAICS) code set forth in the RFQ.

<sup>3</sup> The protesters' reliance on the prior delivery order's subsequently modified price (of \$185,165) is misplaced, since that price reflects an extended performance period that is not anticipated here.

of notification services required.<sup>4</sup> Moreover, based on its market research, the agency expected significantly more robust competition, as compared to 2008--the price of the prior procurement was based on the agency's receipt of a single quote.

In challenging the agency's estimate, the protesters principally contend that the agency failed to consider required start-up and training costs. Although the agency initially indicated, generally, that start-up and training costs were inapplicable to the current procurement, it clarified the record to reflect that only specific start-up and training costs were deleted from its calculation of the estimated procurement value. Specifically, the agency deleted costs associated with data compilation work, which is not required under the current solicitation, as well as certain training-related travel expenses, which, unlike the 2008 delivery order, will not be reimbursed under the current delivery order.<sup>5</sup> According to the agency, no other start-up or training costs were deleted in the agency's calculations. Moreover, to the extent the protesters suggest that vendors would value and submit quotes in excess of the \$150,000 simplified acquisition threshold, the agency reports that it received a substantial number of quotes in response to the RFQ, and that most quotes were less than \$150,000. Given this record, we have no basis to question the reasonableness of the agency's determination that the current procurement has an estimated value below the simplified acquisition threshold, or its decision to set the procurement aside for small businesses, as opposed to SDVOSB concerns, based on that estimated value.

The protests are denied.

Lynn H. Gibson  
General Counsel

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<sup>4</sup> The agency reports that the reduction in the number of minutes is due to improved system efficiency through the use of shorter messages. The protesters provide no basis to question this conclusion. To the extent the protesters allege that they price their solutions on a "minute/message" basis, where minute prices and message prices are the same, the contention is irrelevant. The RFQ clearly requires prices in terms of service minutes (60,000) during which an estimated 101,000 messages are to be sent.

<sup>5</sup> As for training costs, the record does not support the protester's suggestion that there is any appreciable increase in training requirements, or, moreover, that the training here would be other than merely incidental to the notification system services provided. The agency reports that training costs, which were not previously separately priced, and which were considered minimal, will likely be even lower in light of the expected increase in competition under the RFQ.