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## Decision

**Matter of:** Management Consulting, Inc

**File:** B-409332

**Date:** March 5, 2014

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Anthony J. Mazzeo, Esq., Vandeventer Black LLP, for the protester.  
Michael K. Millard, Esq., United States Marine Corps, for the agency.  
Gary R. Allen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging an agency's decision to set aside an acquisition for small businesses is denied where the contracting officer had a reasonable expectation that the agency would receive quotations from at least two capable small businesses.

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### DECISION

Management Consulting, Inc., of Virginia Beach, Virginia, protests the terms of request for proposals (RFP) No. M00264-14-R-0001, with an estimated value of \$35 million, issued by the Department of the Navy, U.S. Marine Corps, for the provision of non-medical services in support of the Marine Corps' Wounded Warrior Regiment (WWR) Recovery Care Coordinators (RCCs), including program management, analysis, and recovery care services.<sup>1</sup> Specifically, the protester contends that the RFP should not have been set aside for small business concerns.

We deny the protest.

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<sup>1</sup> The Marine Corps WWR is a single command that provides and facilitates non-medical assistance to wounded, ill, and injured Marines; sailors, attached to or in support of Marine units; and their family members throughout all phases of recovery. See [www.woundedwarriorregiment.org](http://www.woundedwarriorregiment.org).

## BACKGROUND

The National Defense Authorization Act (NDAA) 2008, Public Law 110-181, §§ 1611, 1614 and 1648 provides for the development and implementation of a comprehensive policy to care, manage and provide transition assistance to service members recovering from wounds or injuries incurred while serving their country. The Marine Corps uses RCCs to assist an injured marine with a recovery plan and to act as the Marine's primary point of contact. RFP, Performance Work Statement (PWS), at 1. The RCCs are located at key geographically dispersed locations. Id.

Management Consulting, the incumbent contractor since 2008, is a large business, and the only entity to have performed these services historically. Protest at 4, 7. The protester has been awarded seven delivery orders and three follow-on contracts to provide the initial support services for the Marines' RCCs. Id. On May 17, 2013, the agency awarded a sole source bridge contract to Management Consulting to ensure that the services continued without interruption while it sought competition for this procurement. Protest, exh. 2, Justification & Approval, at 1.

On November 16, 2012, the Marine Corps issued a request for information (RFI) on an unrestricted basis for the purpose of conducting market research to formulate an acquisition strategy for procuring services in support of the agency's RCCs located across the country.

The RFI stated that it was seeking responses from contractors with the capability to:

- (1) Manage and maintain Corps Recovery Program in its entirety in accordance with the DoD [Department of Defense] Instruction 1300.24 and Secretary of the Navy Instruction 1740.5 to include data analysis and reporting of program; Establishing measures of performance and effectiveness to be used as quality benchmarks, and ability to present analytical and empirical data reflecting customer satisfaction with support provided to the recovering service member and/or their family.
- (2) Provide RCC[s] to assist[] in defining the Marine's individual goals for recovery, rehabilitation, and reintegration; identify and understand the services and resources needed to achieve the Marine's defined goals; Develop and successfully execute the Marine's Comprehensive Recovery Plan, an individual roadmap to reach their set recover and transition goals; Liaison with [wounded, ill, and injured] regiment personnel, government and non-government agencies and Marine

Corps WWR personnel to ensure the integrity of the program and develop assurance standards.

Protest, exh. 1, RFI, at 2.

The agency received 10 responses to the RFI, four from large businesses and six from small businesses. Contracting Officer's Statement (COS), at 3. The Marine Corps described two of the small businesses as "strong," one as "adequate," and three as "weak." AR, Tab 1, Capabilities Assessment, at 1-2.

The agency decided to solicit the requirement as a small business set-aside. COS at 2; AR, Tab 2, Market Research Memorandum, at 2. The contracting officer consulted with a Marine Corps small business specialist and the Small Business Administration (SBA) procurement center representative, both of whom concurred with the decision to set aside the procurement.<sup>2</sup> AR, Tabs 8 and 3, DD Form 2579, Small Business Coordination Records, dated May 2, 2013 and November 7, 2013, respectively.

On November 11, 2013, the Marine Corps issued the RFP as a small business set-aside, and 13 small businesses responded. This protest was filed on December 11, 2013, twelve days before the due date for proposal submission.

## DISCUSSION

Management Consulting contends that, based upon its own experience as the incumbent, the RFI inadequately described the level of effort necessary to perform the requirement. Protest at 5. The protester also argues that since it is the only contractor ever to perform the WWR RCC requirement, no small business could demonstrate the necessary experience. Id. at 7. As a result, the protester claims that the agency improperly determined that there were qualified small businesses that could submit offers, and improperly set the procurement aside for small businesses. Id. Finally, Management Consulting questions the agency's final decision in light of an earlier indication by the agency that the procurement should not be set aside. Comments at 3-5.

Under Federal Acquisition Regulation § 19.502-2(b), a procurement with an anticipated dollar value of more than \$150,000, such as the one 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 fair market prices. Our Office will review the record to determine whether the agency made reasonable efforts to locate small

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<sup>2</sup> This procurement had two successive contracting officers. The first left during the summer of 2013. COS at 1.

business competitors. Mountain West Helicopters, LLC; Trans Aero, Ltd., B-408150, B-408150.2, July 1, 2013, 2013 CPD ¶ 152 at 3.

No particular method of assessing the availability of capable small businesses is required; rather, the assessment must be based on sufficient facts so as to establish its reasonableness. Mountain West Helicopters, LLC; Trans Aero, Ltd., supra. 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 24, 2008, 2008 CPD ¶ 140 at 3. In making set-aside decisions, agencies need not make actual determinations of responsibility or decisions tantamount to determinations of responsibility; rather, they need only make an informed business judgment that there is a reasonable expectation of receiving acceptably priced offers from small business concerns that are capable of performing the contract. Ceradyne, Inc., B-402281, Feb. 17, 2010, 2010 CPD ¶ 70 at 4. 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. Information Ventures, Inc., B-400604, Dec. 22, 2008, 2008 CPD ¶ 232 at 3; ViroMed Labs., B-298931, Dec. 20, 2006, 2007 CPD ¶ 4 at 3-4; Information Ventures, Inc., B-279924, Aug. 7, 1998, 98-2 CPD ¶ 37 at 3. We will not question a small business 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.

Here, the record indicates that the protester's claims lack merit. The protester complains, for example, that the RFI was inadequate because critical requirements, such as training, were missing. Protest at 4, 6-7. The protester is plainly mistaken. A major portion of the RFI requirement provides, in part, that the contractor manage and maintain the RCP "in its entirety in accordance with the DoD Instruction 1300.24 and Secretary of the Navy Instruction 1740.5." Protest, exh. 1, RFI, at 2. Both of these instructions specifically include training for RCCs as part of their core responsibilities. See DoD Instruction 1300.24, encl. 2, Responsibilities, at 7, 8; see also Secretary of the Navy Instruction 1740.5, Responsibilities, at 3.

Furthermore, according to the record, the RFI was prepared and reviewed for accuracy by agency personnel well-versed in the requirements of the Marine Corps wounded warrior program. COS at 1-2. In addition to the specified training requirements, the RFI informed respondents that the WWR manages a monthly caseload of approximately 1,100 wounded, ill and injured marines, with RCCs located across the country. Protest, exh. 1, RFI, at 1. The RFI also required responses to provide a capability statement; citations to current or past customers; a link to the respondent's General Services Administration Schedule contract, if

applicable; other material relating to core competencies of the company; and information concerning the company's size. Id., at 2. Given these facts, we have no basis to question the adequacy of the RFI's description of the level of effort necessary to perform the requirement.

The protester also contends that no small business could possibly demonstrate the necessary experience. Protest at 7. Contrary to this assertion, the record shows that the two small businesses the agency described as strong provided reasonable evidence of such experience. For example, one of these businesses has over [deleted] full time employees ([deleted] of whom are veterans) at [deleted] different locations, and extensive experience as a contractor for both the Marine Corps and Army wounded warrior programs. AR, Tab 5(2), [deleted] Response to RFI, at 2-3. The other is currently managing [deleted] registered nurse case managers and beneficiary services representatives in support of the Air Force's wounded warrior program at [deleted] different Air Force medical treatment facilities. AR, Tab 5(4), [deleted] Response to RFI, at 4. Additionally, the contracting officer consulted with a Marine Corps small business specialist and the SBA procurement center representative, both of whom reviewed the RFI results, and concurred that the procurement should be set aside for small businesses.<sup>3</sup> See Agency Customer Liaison Statement, Feb. 3, 2014, at 1; see also AR, Tabs 8 and 3, DD Form 2579, Small Business Coordination Records, dated May 2, 2013 and November 7, 2013, respectively. Thus, the record shows that the agency made an informed business judgment that there is a reasonable expectation of receiving acceptably priced offers from at least two small business concerns that are capable of performing the contract. Although Management Consulting disagrees with the agency's decision to set aside the procurement, it has not shown that decision to be unreasonable. Commonwealth Home Health Care, Inc., *supra*, at 3.

The protester also challenges the agency's discretion in making its determination, arguing that an early version of the market research memorandum indicated that the procurement could not be set aside for small businesses, and, therefore, conflicted with the agency's final determination. Comments at 3-5. The protester contends that the agency abused its discretion by making the final determination without explaining why it differed from its earlier view. Id. at 5. We disagree. The fact that, after deliberations, an agency's final determination differs from an earlier one does not constitute evidence that the final conclusion was unreasonable. We will not question an agency's small business determination where, as here, the

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<sup>3</sup> In a February 11, 2014 report on the protest prepared at our request, the SBA also concluded that the set-aside was proper in view of the contents of the RFI and the expressions of interest received from other small businesses. SBA Report at 6. We give great weight to the views of the SBA in these matters. See Quality Hotel Westshore; Quality Inn Busch Gardens, B-290046, May 31, 2002, 2002 CPD ¶ 91 at 3-4.

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. See Commonwealth Home Health Care, Inc., supra, at 3. As noted above, we conclude that the record supports the reasonableness of the agency's final determination.

In sum, based upon adequate market research, and with the concurrence of both the agency's small business specialist and the SBA procurement center representative, we find the contracting officer's decision to issue the RFP as a small business set-aside to be reasonable.

The protest is denied.

Susan A. Poling  
General Counsel