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# Decision

**Matter of:** CORE DC, LLC

**File:** B-423475.3

**Date:** December 18, 2025

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## DIGEST

Protest challenging agency's decision not to set aside a procurement for small business concerns is denied where the agency reasonably concluded from its market research that it did not have a reasonable expectation of receiving offers from two or more small businesses capable of performing the required services at fair and reasonable prices.

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## DECISION

CORE DC, LLC, a small business located in Washington, D.C., protests the terms of request for proposals (RFP) No. 15BRRC25R00000018, which was issued on an unrestricted basis by the Department of Justice, Bureau of Prisons (BOP), for residential reentry center (RRC) in-house services and home confinement services. The protester argues that the RFP should have been set aside for small business concerns pursuant to Federal Acquisition Regulation (FAR) section 19.502-2(b), also known as the "Rule of Two."

We deny the protest.

## BACKGROUND

On February 28, 2025, BOP issued the RFP on an unrestricted basis and subsequently amended it four times. The agency assigned North American Industry Classification

System (NAICS)<sup>1</sup> code 623990, Other Residential Care Facilities, to the acquisition. Agency Report (AR), Exh. 3, RFP at 45.<sup>2</sup> The stated objective of this procurement is to establish a RRC that provides comprehensive community-based services for individuals who are in the custody of BOP or under the supervision of United States Probation and Pretrial Services. The mission of the reentry program is to assist federal offenders during the transition from prison to the community by providing services which include self-improvement opportunities during the transition. RFP Statement of Work (SOW) at 154.

As amended, the RFP sought proposals to acquire an RRC facility to provide in-house services and home confinement services for adult males located either within the city limits of Washington, D.C.; Montgomery County, Maryland; Prince George's County, Maryland; Arlington County, Virginia; or Fairfax County, Virginia. The home confinement geographic radius must be within 150 miles of the RRC facility. RFP amend. 1 at 67.

The solicitation required offerors to propose secure and compliant facilities that would be fully operational and ready for occupancy within 240 days after the date of award with 300 available beds for adult males and home confinement services that can accommodate 150 male placements. *Id.* at 79. Additionally, the solicitation required offerors to obtain zoning and occupancy approvals; to demonstrate the ability to manage residential services on a 24/7 basis; to provide security and monitoring systems, case management programs, employment and treatment services, and home confinement operations to meet the RFP's performance requirements. Contracting Officer's Statement (COS) at 1.

The RFP contemplated award of a single indefinite-delivery, indefinite-quantity contract with firm-fixed unit prices with a 1-year base period and four, 1-year options. RFP amend. 1 at 75. The solicitation provided that award would be made to the offeror whose proposal was determined to be in the best interest of the government, considering past performance, technical/management, and price. *Id.* at 124. For purposes of award, the past performance factor was more important than the technical/management factor and when combined, were significantly more importance than price. *Id.* at 124-125.

Consistent with the requirements in the FAR and the Small Business Administration's (SBA) regulations, prior to issuing the RFP, the agency conducted market research to determine whether the requirement should be set aside for small business concerns because the estimated value of the procurement exceeds the simplified acquisition

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<sup>1</sup> NAICS codes are used by the federal government to identify and classify specific categories of business activity that represents the lines of business a firm conducts. See FAR 19.102.

<sup>2</sup> Our citations use the Adobe PDF pagination of documents in the record.

threshold.<sup>3</sup> COS at 1; Memorandum of Law (MOL) at 3; see *also* FAR 10.001(a)(2)(ii) (agencies are required to conduct market research before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold).

In October 2024, BOP posted a request for information (RFI) on the System for Award Management (SAM.gov) database<sup>4</sup>, and conducted several searches of the SBA's Dynamic Small Business database using NAICS code 623990 as the search criteria to ensure that the businesses found would be capable of performing the solicited services. The agency also conducted a search of its own BOP database, including its current contractors providing RRC services in the Washington, D.C. area, to identify potential small business concerns. COS at 2; AR, Exh. 7, First Market Research Report at 2-6.

The agency received responses from four small businesses and one large business. COS at 2. Based upon the market research and analysis of the responses received, the agency found that there was no basis to set aside the solicitation for small businesses because there was no reasonable expectation of receiving offers from at least two responsible small business concerns at fair and reasonable prices. AR, Exh. 8, First Determination & Findings Report at 1-3. The SBA procurement center representative concurred with the agency's market research and conclusion that the procurement should not be set aside for small business concerns. AR, Exh. 24, Small Business Review at 3.

On April 21, 2025, prior to the February 28 initial due date for receipt of proposals, Core DC filed a pre-award protest with our Office challenging BOP's failure to set aside the procurement for small businesses. In response to the protest, BOP informed our Office that it would issue a new RFI, revisit and update its market research, and extend the due date for proposals. As a result, we dismissed the protest as academic. *CORE DC, LLC*, B-423475; B-423475.2, May 8, 2025 (unpublished decision).

To implement its corrective action, BOP conducted additional market research by posting a second RFI on SAM.gov as an addendum to the posted RFP. This second RFI included a questionnaire for responding firms to answer regarding their potential capability to perform the solicited services. AR, Exh. 12, Second RFI at 5. For example, the questionnaire asked prospective offerors to describe their "specific experience in providing [RRC and home confinement services]" and to include "scope and size of the contract/agreement." *Id.* As another example, responding sources were asked if they "currently operate, lease, or own a facility suitable for RRC services in the

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<sup>3</sup> The total estimated value of the contract exceeds \$71 million. COS at 1.

<sup>4</sup> SAM.gov is the current governmentwide point of entry which serves as the single point where government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. FAR 2.101; *Excelsior Ambulance Serv., Inc.*, B-421948, Sept. 27, 2023, 2023 CPD ¶ 220 at 2 n.1.

Washington, DC area” and “[i]f yes, provide the address and current zoning classification” for the facility. *Id.*

Additionally, the contracting officer sent emails regarding the second RFI to (1) all current BOP contractors performing RRC services;<sup>5</sup> (2) all entities that responded to the initial RFI; and (3) all other small businesses under NAICS code 623990 that were potentially capable of providing the solicited services to ascertain their interest in the procurement. *Id.* at 7-11; see also, AR, Exh. 14, Second Market Research Report at 2-3. This effort resulted in a list of 16 potential offerors that were sent direct emails from the contracting officer. AR, Exh. 12, Second RFI at 9; MOL at 6.

The agency received and reviewed a total of seven responses--six from small businesses, and one from an other than small business firm. AR, Exh. 14, Second Market Research Report at 3. Of the seven responses received, four firms did not submit any documentation of relevant experience or of operational capability to provide the solicited services. *Id.* at 3-5. Of the three potential sources that did provide sufficient responses, only two--Core DC and [DELETED]--were small business concerns.

The agency then evaluated Core DC’s and [DELETED] responses to the RFI questionnaire to determine their capability to perform the RRC and home confinement services using the following criteria: (1) ability assessment and experience; (2) facility; (3) zoning documentation; (4) website and corporate information; and (5) past performance. *Id.* at 4-6. The agency determined that neither of the two small business respondents demonstrated the capability to perform the solicited services, finding that:

Although Core DC and [DELETED] are technically small businesses that responded, only Core DC proposed a site-and that site is still under construction. Core DC’s current operational status is incomplete, and the availability of services by the contract start date is uncertain. These factors created high performance risk, timeline uncertainty and significant performance delay. [DELETED] failed to provide a specific site, relevant documentation, or proven past performance.

AR, Exh. 14, Second Market Research Report at 6.

On this basis, the agency concluded that the procurement was not suitable for a small business set-aside. *Id.* at 6. The agency received concurrence from BOP’s small business specialist and the SBA’s procurement center representative. See AR, Exh. 15, Second Small Business Review at 3. On August 12, the agency announced that no changes would be made to the previously issued solicitation. Protest at 3.

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<sup>5</sup> Core DC did not respond to the first RFI posted on SAM.gov. AR, Exh. 8, First Market Research Report at 2.

This protest followed.

## DISCUSSION

Core DC argues that BOP's additional market research was "unreasonably cabined, restrictive, and incomplete," and contends that any reasonable market research would have shown that there are more than two capable small business concerns interested in competing for this requirement. Comments at 5. The protester also argues that the agency utilized an unreasonably restrictive standard by assessing the firms' RFI responses during the market research phase as if they were proposals responding to a solicitation. See *generally, id.* at 5-10.

The agency counters that its market research was reasonable and properly concluded that it would not receive two or more offers from small business concerns capable of performing the requirement. BOP argues that the extent and scope of its additional market research was reasonably designed to identify small businesses capable of performing the RRC and home confinement services. The agency asserts that the responses to the second RFI and direct agency emails confirmed that while small businesses expressed interest in the procurement, the contracting officer reasonably concluded that it would not receive offers from two or more small business concerns capable of performing the requirements and reasonably determined to conduct the procurement on an unrestricted basis.

The small business "Rule of Two" describes a long-standing regulatory policy set forth in the FAR to implement provisions in the Small Business Act, 15 U.S.C. § 644(a), requiring that small business concerns receive a "fair proportion of the total purchase and contracts for goods and services of the Government." As implemented by the FAR, acquisitions above the simplified acquisition threshold must be set aside for exclusive small business participation if an agency's market research shows there is a reasonable expectation that offers will be received from at least two responsible small business concerns and award will be made at a fair market price. FAR 19.502-2(b); *CEPEDA Assocs., Inc.*, B-418284, Feb. 24, 2020, 2020 CPD ¶ 86 at 4; *SEK Solns., LLC*, B-406939.2, Feb. 27, 2014, 2014 CPD ¶ 87 at 7; *Metasoft, LLC*, B-402800, July 23, 2010, 2010 CPD ¶ 170 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 or requests for information. We generally regard such set-aside decisions as a matter of business judgment within the contracting officer's discretion that we will not disturb absent a clear showing that it was unreasonable. *AeroSage, LLC*, B-416381, Aug. 23, 2018, 2018 CPD ¶ 288 at 8. As our Office has explained, a contracting agency's research and analysis to determine the availability of responsible small business concerns for set-aside purposes must address not only the existence of small businesses that might submit proposals, but also their capability to perform the

contract at a fair market price. *Global Tech. Sys.*, B-411230.2, Sept. 9, 2015, 2015 CPD ¶ 335 at 15.

As a threshold issue, in arguing that the agency's market research was unreasonable, the protester alleges that the agency conflated the set-aside determination with a proposal evaluation under FAR part 15, or a responsibility determination under FAR section 9.104-1. See Comments at 2, 9-10. In this regard, the protester complains that the agency's analysis of the firms' RFI responses was unduly restrictive by requiring more information than reasonably necessary to establish that the Rule of Two was met. Comments at 9. Specifically, the protester relies on the United States Court of Federal Claims' decision in *Ranger Am. of Puerto Rico, Inc. v. United States*, 153 Fed. Cl. 744 (2021), for the proposition that an agency may not conduct a more searching Rule of Two analysis tantamount to an affirmative responsibility determination.

Core DC's reliance on the court's decision in *Ranger* is misplaced. In its opinion, while the court stated that "the [Department of Labor] was not required to impose the requirements of the contractor-selection process onto the small business set-aside determination," nothing in the court's opinion precludes an agency from doing so. *Id.* at 780. Thus, *Ranger America*, consistent with our prior decisions, recognizes that contracting officers enjoy broad discretion in the depth of their Rule of Two market research and analyses. While the protester suggests that *Ranger America* places a limit on the discretion to conduct a more probing Rule of Two analysis, we find no support for that proposition in the text of the decision.

Turning to the merits of the agency's Rule of Two analysis here, according to the protester, there are three small business concerns that responded to the second RFI that the agency should have found capable of performing the solicited requirements: (1) the protester; (2) [DELETED]; and (3) [DELETED].<sup>6</sup> See Comments at 5-9. Had the agency conducted reasonable market research, the protester contends that the agency would have determined that the FAR section 9.502-2(b) criteria were met and set aside this procurement for small business concerns. *Id.* at 9. We do not agree.

First, the fact that multiple small businesses are identified in the course of market research is not necessarily determinative of an offeror's capability to perform the requirement. *Plateau Software, Inc.*, B-416386, Aug. 24, 2018, 2018 CPD ¶ 291 at 7; *Triad Isotopes, Inc.*, B-411360, July 16, 2015, 2015 CPD ¶ 220 at 5. The record here demonstrates that the agency reasonably evaluated the three alleged responsive small business concerns.

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<sup>6</sup> [DELETED], a [DELETED] small business, was one of four firms that did not provide any documentation of relevant experience or operational capability to provide the solicited services. See AR, Exh. 14, Second Market Research Report at 3-4. The record shows that the agency found that while [DELETED] "has relevant background in supportive services, it lacks demonstrated experience in operating or managing RRC facilities at the scale and complexity required." *Id.* at 4.

For instance, the protester contests the agency's findings with regard to its capability to perform the required services. Core DC claims that as a BOP incumbent contractor in Washington, D.C., the agency's findings that the firm lacks operational readiness because its proposed facility is still under construction and, therefore, was not currently performing RRC services under its contract were unreasonable. Comments at 5-6 *citing* AR, Exh. 14, Second Market Research Report at 5-6. Further, the protester contends that even if the firm does not have an available RRC facility that fact has no bearing on the firm's capability because the RFP at issue requires a fully operational facility within 240 days after award. In other words, despite not offering a fully operational facility, Core DC insists that its second RFI responses demonstrate that it was a small business capable of performing the RRC requirements. Comments at 6. We disagree.

At the outset, we note the unique nature of this social rehabilitation procurement and the difficulties many firms have in establishing facilities in areas due to community opposition, complex zoning issues, operational readiness, and public safety constraints that require a responsible contractor with verified, functioning facilities and proven capability to perform the solicited services. COS at 1; *see* AR, Exh. 14, Second Market Research Report at 6. In evaluating Core DC's capability, the agency noted that Core DC was previously awarded an RRC and home confinement services contract with a performance start date in October 2020. The agency also noted that Core DC at the time of its market research still had not provided any RRC services under that contract because its proposed facility was still under construction; as such, the protester has provided only home confinement services under that contract. *See*, AR, Exh. 14, Second Market Research Report at 5-6. BOP found that Core DC's current lack of operational readiness created high performance risk, timeline uncertainty, and significant performance delay, and determined that Core DC was not capable of performing the procurement requirements. *See, id.* at 6; MOL at 7. While the protester disagrees with the scope of the agency's market research, we find reasonable the agency's actions as our Office has previously found that no particular method of assessing the availability of capable small businesses is required. *See, e.g., Global Tech. Sys., supra; SEK Solns., LLC, supra.*

Similarly, the protester claims that [DELETED] responses to the RFI questionnaire were "sufficient to show that a reasonable expectation exists that it is a qualified small business offeror for the purposes of FAR 19.502-2(b)." Comments at 7. However, the record shows that while [DELETED] responded to both RFIs in which the firm stated that it operated [DELETED] RRC locations [DELETED], the firm did not identify a specific, available site in the Washington, D.C. area. *See* AR, Exh. 14, Second Market Research Report at 4. Despite an additional direct email request from the contracting officer, [DELETED] did not provide any documentation confirming any locations in the Washington, D.C. area. *Id.*; COS at 3; MOL at 6. The record further shows that the firm did not provide any zoning documentation nor documentation of its operational experience and capability to perform the solicited services at the federal level in its response to the second RFI. *See* AR, Exh. 14, Second Market Research Report at 4-5.

Given [DELETED] failure to fully respond to the RFI questionnaire, we have no basis to conclude that the agency's determination that [DELETED] was not a capable small business pursuant to FAR section 19.502-2(b) was unreasonable.

In sum, based on the record presented, we have no basis to question the agency's judgment that none of the small business that responded to the RFI was capable of performing this requirement. The fact that multiple small businesses are identified in the course of market research is not necessarily determinative of an offeror's capability to perform the requirement. *Plateau Software, Inc., supra*; *Triad Isotopes, Inc., supra*.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel