U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: LJR Solutions, LLC

File: B-424487

Date: August 14, 2026

Nicole D. Pottroff, Esq., Shane J. McCall, Esq., John L. Hotlz, Esq., Gregory P. Weber, Esq., and Jordan I. Akins, Esq., Koprince McCall Pottroff LLC, for the protester.
Jon J. Gottschalk, Esq., and David Lank, Esq., Department of Health and Human Services, for the agency.
Christopher Alwood, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to set aside a multiple-award indefinite-delivery, indefinite-quantity contract for small business concerns is sustained where the record shows that the agency's consideration of whether it had a reasonable expectation of receiving competitive offers in terms of fair market prices, quality, and delivery from two or more responsible small business concerns was unreasonable or otherwise inadequately documented.

DECISION

LJR Solutions, LLC, a small business of Myrtle Beach, South Carolina, protests the terms of request for proposals (RFP) No. 75N98026R00042, issued by the Department of Health and Human Services (HHS), National Institutes of Health (NIH), for professional, scientific, and technical services in support of NIH's current and emerging research priorities. The protester argues that the procurement should have been set aside for small businesses.

We sustain the protest.

BACKGROUND

This is the second protest challenging NIH's efforts to conduct this procurement on a full and open basis. NIH is seeking to obtain scientific and technical services to support its broad and complex research portfolio. Contracting Officer's Statement (COS) at 1. Between March 22, 2023 and April 5, 2024, the agency conducted market research related to this professional, scientific, and technical support services requirement by issuing sources sought notices, conducting an industry day, and convening meetings with potential sources. *Id.* at 2. On October 31, 2024, NIH issued RFP No. 75N93024R00013, seeking proposals to meet the requirement on a full and open basis with a small business reserve. *Id*. at 3; Agency Report (AR), Tab 4.1, RFP No. 75N93024R00013 at 7.[1]

On December 16, 2024, LJR filed a protest with our Office, challenging the terms of the 2024 solicitation and arguing that the agency unreasonably failed to set aside the procurement for small businesses. *LJR Solutions, LLC*, B-423230, Dec. 31, 2024 (unpublished decision). Thereafter, the agency notified our Office that it intended to take corrective action by reconsidering its decision not to set aside the procurement for small business concerns and, if necessary, by amending the solicitation. *Id*. We subsequently dismissed LJR's 2024 protest as academic based on the agency's pending corrective action. *Id*.

Between December 17, 2024 and January 7, 2025, the agency reviewed its procurement strategy as part of the corrective action. COS at 3. The contracting officer states that the agency then did not take further action related to the procurement for more than a year. *Id*. Then, on March 26, 2026, the agency issued the current RFP pursuant to the competitive procedures of Federal Acquisition Regulation (FAR) and Revolutionary FAR Overhaul (RFO) part 15.[2] AR, Tab 4.6, RFP at 1, 72, 123. The solicitation contemplated the award, on a best-value tradeoff basis, of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts, with a 5-year period of performance, to provide professional, scientific, and technical services in support of NIH's research priorities.[3] RFP at 1, 6, 75, 132. The solicitation stated that it was not

---

[1] Some documents in the agency report do not contain a uniform set of page numbers. For clarity, unless otherwise noted, all citations to the record are to the consecutive numbering of the pages in the Adobe PDF documents provided by the agency.

[2] HHS adopted the updated versions of FAR parts 15 and 19, issued as part of the RFO, through a class deviation. Memorandum of Law (MOL) at 3, n.2; HHS FAR Class Deviation 2026-01, amend. 2. The solicitation contains provisions and clauses from both the existing FAR and the RFO, sometimes including two different versions of the same clause. *See* RFP at 72, 123 (incorporating the full text of FAR provision 52.215-1, Instructions to Offerors--Competitive Acquisition and the RFO version of the same provision by reference). The parties have not established that any distinctions between the FAR and RFO versions of the provisions and clauses in the solicitation affect the analysis of the agency's actions in this procurement. For clarity in this decision, citations to each set of regulations will use the abbreviations "FAR" and "RFO" as appropriate.

[3] The solicitation states that such support includes:

(continued...)

set aside for small business concerns but incorporated by reference the FAR 52.219-31 "Notice of Small Business Reserve, (MAR 2020)" provision. *Id*. at 1, 124. That provision provides that the solicitation "contains a reserve for one or more small business concerns." FAR 52.219-31. However, the RFP did not specify the number of awards that would be reserved for small businesses.[4]

On April 13, the protester sent a letter to the agency arguing that the solicitation should be wholly set aside for small business concerns. COS at 3; AR, Tab 5.1, LJR April 13 Letter to NIH. On April 30, the agency responded that it had decided not to set aside the RFP for small business concerns "based on a contemporaneous market research reevaluation conducted prior to [the] issuance of the solicitation." AR, Tab 5.3, NIH April 30 Letter to LJR at 1. The letter explained that the agency's market research "did not identify at least two responsible small businesses capable of performing the full scope and the volume of requirements." *Id*. at 2. The agency also stated that "[m]any" small businesses would be reliant on subcontracting or teaming arrangements for critical performance elements, "which does not establish independent capability to perform the requirement in its entirety." *Id*.

On May 8, before the deadline established by the solicitation for receipt of proposals, LJR filed a protest at our Office challenging the agency's decision to not set aside the procurement for small business concerns. *See* AR, Tab 4.14, RFP amend. 008 at 1.[5]

(...continued)

> specialized scientific expertise related to basic, translational and clinical research; vaccine research and development; general laboratory research at [biosafety level]-2, -3, and -4; veterinary and scientific research in [animal biosafety level]-2, -3 and -4 environments; and bioinformatics and computational biology.

RFP at 6.

[4] While the contracting officer states that NIH "elected to reserve three small business positions within the IDIQ pool," COS at 5, this is not specified anywhere in the solicitation. When a potential offeror submitted a question asking how many awards were reserved for small businesses under FAR provision 52.219-31, the agency did not answer the question and instead referenced the solicitation's small business subcontracting goals, which apply to large businesses. AR, Tab 4.11, RFP amend. 005 at 3.

[5] The agency amended the solicitation eight times. COS at 4. Unless otherwise noted, citations to the RFP in this decision are to the initial RFP issued by the agency.

DISCUSSION

LJR primarily challenges the agency's decision not to set aside the procurement for small business concerns.[6] Protest at 9-20; Comments at 3-15. In this regard, LJR argues that the agency's analysis of the market research conducted was unreasonable and insufficiently documented to support the decision not to set aside the solicitation for small business concerns. Comments at 3-9. Specifically, the protester contends that the 2024 market research identified three capable small business concerns and the agency's more recent analysis has not documented or otherwise provided a reasonable explanation for why the agency no longer considers these firms to be capable. *Id*. at 3-4. The protester also argues that the agency unreasonably disregarded small business concerns as incapable of meeting the agency's requirements solely because they were unable to self-perform the entire requirement and would need to subcontract some of the work. *Id*. at 5-6.

NIH responds that it had no reasonable expectation that offers would be obtained from at least two small business concerns that the agency could award a contract to at a fair and reasonable price. MOL at 3-6; COS at 4-7. The agency contends that the contracting officer reviewed the market research performed for the 2024 solicitation and found that "[s]everal" small businesses reviewed would be reliant on subcontracting to meet the RFP's staffing, laboratory biosafety, and geographic requirements. MOL at 5-6. The agency asserts therefore that, based on "the market research and historical performance data, the [contracting officer] reasonably determined that the requirement did not meet the criteria for a small business set-aside." *Id*. at 6.

Under section 19.104-1(a) of the RFO, agencies are required to set aside any procurement valued over the simplified acquisition threshold exclusively for small business concerns when there is a reasonable expectation that offers that are "competitive in terms of fair market prices, quality, and delivery" will be obtained from at least two responsible small business concerns. RFO 19.104-1(a). This is commonly referred to as the "rule of two" requirement and is substantively similar to requirements in the FAR and Small Business Administration regulations, which our decisions have previously addressed. *See*, *e.g.*, *Knudsen Systems, Inc.*, B-422433.2, Aug. 9, 2024, at 4 (discussing FAR 19.502-2(b)); *see also Financial & Realty Servs., LLC*, B-422858, Nov. 25, 2024, at 3-4 (discussing 13 C.F.R. § 125.2(f)).

Generally, we 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

---

[6] The protester challenged other aspects of the procurement. For example, the protester argued that the agency failed to implement the announced corrective action in response to LJR's prior protest and that the agency's market research was outdated. Comments at 2-3, 12-14. This decision does not address all of LJR's arguments, however, we have considered each of the protester's arguments and, except for those discussed in this decision, find none that provides a basis to sustain the protest.

was unreasonable. *AeroSage, LLC*, B-416381, Aug. 23, 2018, at 8. 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, at 3. The use of any particular method of assessing the availability of small businesses is not required. *Mountain W. Helicopters, LLC; Trans Aero, Ltd.*, B-408150, B-408150.2, July 1, 2013, at 2-3. The assessment must nevertheless be based on sufficient facts so as to establish its reasonableness. *Knudsen Systems, Inc.*, *supra* (*citing Safety Storage, Inc.*, B-280851, Oct. 29, 1998, at 3).

Based on our review of the record, we sustain the protest because the agency's determination not to set aside the procurement for small business concerns was unreasonable and internally inconsistent. By way of background, we first examine the market research NIH used in deciding not to set aside the requirement for small businesses.

Market Research

As noted above, the agency conducted market research for this requirement before the issuance of the 2024 RFP. COS at 2. That market research included issuing multiple sources sought notices, an industry day, and one-on-one meetings with potential sources. *Id*.; AR, Tab 2.12, 2024 Market Research Memorandum at 6-7.

As relevant here, the agency reviewed 22 capability statements submitted in response to a January 30, 2024 sources sought notice and found that two of the small business concerns demonstrated the capability to perform the requirement, while 12 other small business concerns demonstrated potential capability. AR, Tab 2.12, 2024 Market Research Memorandum at 7. The agency then met individually with the 12 concerns identified as potentially capable "to ask clarifying questions to assist in determining demonstrated capability." *Id*. Based on these interviews, the agency found one of the 12 firms to be capable, two to be potentially capable, and the other nine not capable of meeting the requirement. *Id*. at 7-11. The agency documented the basis for the 11 small business concerns it did not find to be capable by identifying the aspects of the requirement where each firm did not demonstrate experience or ability. *Id*.

Based on this market research, the previous contracting officer concluded that, despite identifying three capable small business concerns, there were "not a sufficient number of capable small businesses" for a total small business set aside. *Id*. at 13. Accordingly, the previous contracting officer decided to conduct the procurement on a full and open basis with a small business reserve. *Id*. The HHS small business office reviewed this determination and approved the acquisition approach for the 2024 RFP in July of that year. AR, Tab 2.13, Questions from Small Business Office; AR, Tab 2.14, HHS Small Business Review Form.

The record does not contain any subsequent market research or set-aside consideration for the requirement between the issuance of the 2024 RFP and the March 26, 2026, issuance of the instant solicitation.[7] COS at 4. As noted above, on April 13, the protester sent a letter to the agency arguing that the solicitation should be set aside for small business concerns. AR, Tab 5.1, LJR April 13 Letter to NIH. On April 30 (more than a month after the agency issued the RFP), the contracting officer--apparently for the first time--documented his consideration of whether the current solicitation should be set aside for small business concerns.[8] AR, Tab 5.2, 2026 Market Research Memorandum.

Based on a review of the incumbent contract data and the 22 capability statements submitted in response to the January 30, 2024 sources sought notice, the contracting officer determined that there was no reasonable expectation that offers would be received from at least two responsible small businesses capable of performing "the totality of the work at fair market prices." *Id*. at 2, 4. The contracting officer found that none of the 22 capability statements--including those submitted by large businesses--demonstrated the ability to "independently meet the full scope of requirements." *Id*. at 2. The contracting officer explained that "[s]everal submissions" indicated a reliance on subcontracting and partner networks rather than an established internal workforce, which demonstrated "that the prime contractor lacks the ability to perform the totality of the requirement using its own resources." *Id*. at 3. The contracting officer also found that "certain respondents" demonstrated limited geographical reach and "[s]everal

---

[7] Amendment 001 to the current RFP stated that the 2024 solicitation did not result in an award and is no longer active. AR, Tab 4.7, RFP amend. 001. The amendment explained that the current solicitation is for a "similar requirement" as the 2024 solicitation, "supersedes any previous notices[,] and represents the Government's current requirement." *Id*. Despite these statements, the agency subsequently stated in amendment 002 to the RFP that the 2024 solicitation "has been amended as [the instant RFP] due to changes in organization structure." AR, Tab 4.8, RFP amend. 002. Neither the agency nor the record clarifies whether the instant RFP (which has a different solicitation number) is an amended version of the 2024 RFP or a new solicitation for the same requirement. Based on the arguments raised by the parties, we need not address this discrepancy to resolve the protest.

[8] The memorandum states that its purpose is to "reassess" the agency's small business acquisition strategy, but, as noted above, there is nothing in the record documenting that the agency conducted a small business set aside determination for the instant solicitation before the solicitation was issued. AR, Tab 5.2, 2026 Market Research Memorandum at 1. Similarly, the memorandum states that as part of the reassessment, "updated market research was conducted," but then only describes a review of the capability statements and incumbent contract data from the agency's 2023-2024 market research. *Id*. at 2. Moreover, to the contrary of the language in the memorandum, the contracting officer stated in response to the protest that no new market research was conducted in 2025 or 2026. COS at 4.

respondents" did not demonstrate experience with biosafety level-4 laboratory environments. *Id*. Further the contracting officer found that the market research conducted in 2024 did not reflect a shared understanding by agency personnel as to what it meant to be a potentially capable small business concern. *Id*.

Set Aside Decision

On this record, we find no support for the contracting officer's conclusion that there are no small business concerns capable of performing the solicitation's requirement based on the submitted capability statements. First, the April 2026 memorandum does not identify, with any specificity, how the three small businesses identified as capable in the 2024 market research would not be able to meet the current RFP's requirements.[9] AR, Tab 5.2, 2026 Market Research Memorandum. To the extent the agency asserts that the contracting officer "explained the discrepancy between the initial review" of capability statements in 2024 (which found that three small business concerns had demonstrated the capability to perform the requirement) "and why those findings were inaccurate" (*i.e.*, why the agency later found that no small businesses were capable of performing the requirement), the record demonstrates otherwise. MOL at 6. The contracting officer merely found that agency employees conducting the 2024 market research may not have had a shared understanding of what made a firm potentially capable, but the contracting officer does not meaningfully explain how this lack of understanding applied to the small businesses identified as capable. AR, Tab 5.2, 2026 Market Research Memorandum at 3. This lack of documentation, by itself, supports a basis to sustain the protest.

Moreover, the contracting officer's general considerations of the 2024 market research appears to be internally inconsistent, insufficiently documented, and thus without a reasonable basis.[10] To justify his decision not to perform updated market research, the contracting officer states that "the marketplace [and] the type of requirement did not change" between the 2024 market research and the issuance of the 2026 RFP. COS at 4. The contracting officer never explains, however, why, if the marketplace and requirements did not change, the three small business firms previously found capable to meet those requirements no longer do.

---

[9] The April 2026 memorandum does not identify any single requirement that none of the small businesses that submitted capability statements could meet. AR, Tab 5.2, 2026 Market Research Memorandum. Instead, the April 2026 memorandum generally discusses aspects of the requirement that "[s]everal" or "certain" unnamed small businesses could not perform. *Id*. at 2-3. Unlike the 2024 market research memorandum, the April 2026 memorandum fails to specify which requirements each small business that submitted a capability statement could not meet. *Compare* AR, Tab 5.2, 2026 Market Research Memorandum, *with* AR, Tab 2.12, 2024 Market Research Memorandum.

[10] RFO 19.104-1(b) requires contracting officers to document the rationale when a contract is not set aside for small business. RFO 19.104-1(b); *see also* FAR 19.506(a).

Despite the lack of contemporaneous documentation specifically addressing why these small business concerns are no longer capable, the agency now claims that its set aside determination was reasonable because the reviewed small business concerns demonstrated only the capability to perform certain aspects of the requirement but did not "independently support the full scope, volume, and range of tasks required under this effort." COS at 5. Applying this standard in making its set aside determination, however, applies an unfair standard to the interested small businesses here because the agency does not believe any firm (large or small) is capable of independently supporting the full volume of work required under this effort.[11] The contracting officer found that none of the firms that submitted capability statements, large or small, were able to independently meet the full scope of the requirements. AR, Tab 5.2, 2026 Market Research Memorandum at 2. Since small businesses and large businesses are similarly situated in this regard, the agency fails to explain why small business are any less capable of performing as compared to a large business, when both will need to enlist other firms on their teams to perform the requirements, or the agency will need multiple contractors to perform the volume of the work required.[12]

---

[11] The agency states that it believes the volume of work being sought requires at least eight IDIQ awards. COS at 5; AR, Tab 2.12, 2024 Market Research Memorandum

[12] To the extent the agency is conducting a full-and-open competition because it does not expect to receive proposals from enough capable small businesses to make the eight planned awards, such a rationale is also insufficient. Our Office has explained that an agency may not ignore statutory and regulatory "rule of two" requirements in a multiple-award IDIQ procurement simply because it does not expect to receive enough qualifying offers from a type of small business concern to make all the IDIQ awards to that type of small business. *See Spur Design, LLC*, B-412245.3, Feb. 24, 2016, at 8. In *Spur Design*, we discussed that certain statutory and regulatory requirements, which we refer to as the Veteran Affairs (VA) Act's Rule of Two, require the VA to set aside acquisitions for service-disabled veteran-owned small businesses (SDVOSB) concerns if the VA determines that there is a reasonable expectation that offers will be received by at least two SDVOSB concerns and that award can be made at a fair and reasonable price. *Id*. at 5. The VA argued that, despite technically meeting the requirements of the VA Act's Rule of Two, the agency was not required to set aside a multiple-award IDIQ because the number of qualified SDVOSB concerns was less than the anticipated 14 awards. *Id*. at 6. In sustaining the protest, our Office explained that, while the VA had the discretion to determine the number IDIQ contracts necessary to satisfy its needs, such discretion did not allow the VA to ignore the statutory and regulatory requirements of the VA Act's Rule of Two. *Id*. at 8. Here, as discussed below, the agency does not appear to consider whether not expecting to receive eight offers from capable small businesses could provide a rationale to conduct the procurement as a partial small business set-aside. *See* FAR 19.502-4; *see also* RFO 19.104-2.

As it relates to the above, the solicitation does not in fact require IDIQ contract holders to meet each requirement independently, that is, without the use of subcontractors. Although the RFP provided that firms "must have the capability to perform the [s]tatement of [w]ork in its entirety," including providing all labor categories sought, RFP at 132, the RFP does not specifically mandate that a prime contractor have this capability independently.[13] Also, the solicitation specifically contemplates the use of subcontractors in a variety of ways, including to perform "major or critical aspects of the requirement." RFP at 87; *see also* RFP at 122 (requiring offerors to identify what duties a subcontractor will perform), 123 (incorporating FAR provision 52.207-6 Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures). In light of the above, we see no basis for the agency's decision to reject, out of hand, small businesses that can't perform the full scope of the requirements on its own, when the agency is of the view that no firm can meet the full scope of the requirements (large or small) without using subcontractors, and the solicitation expressly allows for the use of subcontractors.[14] In other words, there is nothing in the record to explain why the agency didn't consider whether small businesses could perform the requirements using subcontractors, as it believes large businesses would need to do.

Further, even assuming, *arguendo*, that the agency did not have a reasonable basis to fully set aside the procurement for small business concerns, the agency has not

---

[13] As part of the solicitation's question and answer process, a potential offeror asked "[m]ust a prime offeror independently provide all labor categories listed in [a]ttachment 18, or may the prime satisfy this requirement through a combination of its own employees [and] subcontractors[.]" AR, Tab 4.9, RFP, amend 003 at 3. This question was the only one out of 185 questions listed in amendment 003 that the agency did not respond to. *See id.*

[14] We are similarly unpersuaded by the agency's broad concerns that small businesses would be overly reliant on subcontracting such that it would compromise the firm's ability to perform the requirements. *See* MOL at 5. In this regard, the solicitation includes RFO clause 52.219-14 Limitations on Subcontracting, which sets a maximum percentage of the contract price that a small business prime contractor can subcontract to not similarly situated firms. RFP at 58-60. Our Office has found proper an agency's determination that it could reasonably expect a small business concern to submit a proposal meeting the agency's requirements even if that firm cannot perform all of a solicitation's requirements itself, as long as it can perform the requirements without violating the limitations on subcontracting clause. *Analytical Graphics, Inc.*, B-413385, Oct. 17, 2016, at 8-11. Here, while the agency makes generalized statements about the risk of overreliance on subcontracting, it does not meaningfully discuss whether it believes the small business concerns would need to actually violate the limitations on subcontracting clause or otherwise jeopardize performance due to an overreliance on large businesses. In short, the agency's statements are not based on the consideration of any actual facts and reflect uninformed conclusions.

sufficiently documented its basis to conduct a full and open competition with a small business reserve.

In this regard, RFO 19.112 Reserves states in part:

> a) In accordance with section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)(3)) and 13 CFR 125.2(e)(4), contracting officers may, at their discretion when conducting multiple-award procurements using full and open competition, reserve one or more contract awards for any of the small business concerns identified in 19.000(a)(3), when market research indicates—
>
> > (1) A total set-aside is not feasible because there is no reasonable expectation of receiving offers that are competitive in terms of fair market prices, quality, and delivery from at least two responsible small business concerns identified in 19.000(a)(3), that can perform the entire requirement; and
> >
> > (2) A partial set-aside is not feasible because—
> >
> > > (i) The contracting officer is unable to divide the requirement into distinct portions; or
> > >
> > > (ii) There is no reasonable expectation that at least two responsible small business concerns identified in 19.000(a)(3) can perform any portion of the requirement competitively in terms of fair market price, quality, and delivery.

RFO 19.112(a).[15]

Accordingly, a contracting officer may only utilize full and open competition with a small business reserve if both total and partial small business set-asides are not feasible. Here, as discussed above, the agency conceded that "some small businesses demonstrated the capability to perform certain aspects of the requirement." COS at 5. Despite this, nothing in the contemporaneous record or the agency's pleadings indicates the agency ever considered whether a partial set aside was feasible. Without more, we see no basis to conclude that NIH's determination to conduct the procurement on a full and open basis with a small business reserve was reasonable and in accordance with the requirements of the RFO.

In sum, while we express no view on whether the agency might be able to support a reasonable decision to conduct a full and open procurement for this requirement, we

---

[15] This RFO language is identical to the language of FAR 19.503(a).

find that the current record provides no basis to conclude that there is a reasonable expectation the agency will not receive offers from at least two responsible small business concerns that are competitive in terms of price, quality, and delivery.

Competitive Prejudice

Finally, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Armorworks Enters., LLC*, B-400394.3, Mar. 31, 2009, at 3; *Cogent Sys., Inc.*, B-295990.4, B-295990.5, Oct. 6, 2005, at 10. In the context of a protest challenging the terms of a solicitation, competitive prejudice occurs where the challenged terms place the protester at a competitive disadvantage or otherwise affect the protester's ability to compete. *Knudsen Systems, Inc.*, *supra* at 11. Where our Office finds an agency's determination not to set aside a procurement for small businesses to be unreasonable, we have found small business potential offerors to be prejudiced because it would be more difficult to compete against larger companies in a full and open competition. *AeroSage*, *supra* at 9.

The agency contends that LJR cannot demonstrate prejudice because the agency is reserving "multiple potential IDIQ awards for qualified small business offerors" and is reserving individual task orders under the simplified acquisition threshold for small business IDIQ contract holders. MOL at 7. The agency argues that the protester "is in fact in a more advantageous competitive position than a similarly situated large business due to the agency's inclusion of a small business reserve." *Id*. The agency applies the wrong standard to assess the protester's relative competitive position. Here, whether LJR is competitively prejudiced is not a question of whether it is better situated than a potential large business offeror, but whether it is at a competitive disadvantage with the current solicitation terms compared to the terms the protester alleges the solicitation should include. A reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *See CWTSatoTravel*, B-404479.2, Apr. 22, 2011, at 11-12. Given that LJR would certainly be in a superior competitive position if the solicitation is fully set aside for small businesses, especially with regard to future task order competitions, we conclude that the protester has sufficiently demonstrated it was competitively prejudiced.

RECOMMENDATION

We recommend that NIH determine whether the solicitation should be fully or partially set aside for small business concerns consistent with our decision, including conducting new market research if appropriate. Based on the results of NIH's determination, the agency should conduct the procurement accordingly. We also recommend that the agency reimburse the protester its costs associated with filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel