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## Decision

**Matter of:** KNAPP Logistics Automation, Inc.

**File:** B-406303

**Date:** March 23, 2012

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Benjamin H. Sawyer, Esq., Sutherland Asbill & Brennan LLP, for the protester.  
Maura C. Brown, Esq., Department of Veterans Affairs, for the agency.  
Jonathan L. Kang, Esq., and James A. Spangenberg, 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 a procurement for small businesses is denied where the record shows that the contracting officer reasonably expected that at least two responsible offerors would submit offerors and that award would be made at a fair market price.

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### DECISION

KNAPP Logistics Automation, Inc., of Kennesaw, Georgia, protests the terms of (RFP) No. VA-797M-11-RP-0212, which was issued by the Department of Veterans Affairs (VA) for a tablet capsule automation (TCA) system. The protester contends that the agency improperly issued the solicitation as a total small business set-aside.

We deny the protest.

### BACKGROUND

The initial solicitation, RFP No. VA-797M-10-RP-0227, was issued on September 17, 2010, and sought proposals to replace the VA's TCA system in North Charleston, South Carolina. The initial solicitation was issued on an unrestricted basis. The agency awarded the contract to R/X Automation Solutions, Inc. (R/X) on March 3, 2011.

On March 14, KNAPP filed a protest with our Office challenging the award to R/X. In its report on the protest, the VA responded to KNAPP's arguments, and requested that our Office deny the protest. On April 25, KNAPP filed a

supplemental protest, arguing that R/X's proposal improperly took exception to the solicitation by providing a conditional offer that permitted the awardee to "repudiate the awarded contract without prejudice" in the event that the agency did not agree after award to a modification of the payment terms. KNAPP Logistics Automation, Inc.--Protest and Costs, B-404887.2, B-404887.3, July 27, 2011, 2011 CPD ¶ 141 at 2 (denying KNAPP's protest of the cancellation of the solicitation and claim for protest costs). On May 3, prior to submitting a supplemental report responsive to the protest, the VA advised our Office that it would take corrective action in response to the protest by cancelling the award to R/X and issuing a new solicitation. Id. Based on the agency's notice of corrective action, we dismissed the protest.

As part of the agency's corrective action, the contracting officer (CO) reviewed whether the procurement should be set aside for small businesses. Agency Report (AR) at 1-2. The CO noted that, in response to the unrestricted solicitation, two small business offerors had submitted proposals--R/X and [deleted]. Id. at 1; CO Statement at 1. Based on the CO's market research, as discussed in detail below, the CO concluded that the requirement for the TCA system should be set aside for small business offerors. AR, Tab 5, Set-Aside Determination and Findings (D&F), at 1.

On September 22, the VA issued the revised solicitation as a total small business set-aside. KNAPP filed this protest challenging the set-aside determination, prior to the amended closing date of January 6, 2012.

## DISCUSSION

Under Federal Acquisition Regulation (FAR) § 19.502-2(b), a procurement with an anticipated dollar value of more than \$150,000 must be set aside for exclusive small business participation when there is a reasonable expectation that: (1) offers will be received from at least two responsible small business concerns, and (2) that award will be made at a fair market price. While the use of any particular method of assessing the availability of small businesses is not required, the agency must undertake reasonable efforts to locate responsible small business competitors. ViroMed Labs., B-298931, Dec. 20, 2006, 2007 CPD ¶ 4 at 3-4. 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 is limited to determining whether that official abused his or her discretion. Ceradyne, Inc., supra; Vox Optima, LLC, B-400451, Nov. 12, 2008, 2008 CPD ¶ 212 at 5.

The CO here concluded that there was a reasonable expectation of receiving proposals from three responsible offerors, each of whom confirmed to the CO their interest in submitting a proposal: R/X Automation, [deleted], and [deleted]. AR, Tab 5, Set-Aside D&F, at 1; Supp. CO Statement at 1-3. The CO also concluded that the award was expected to be made at a fair market price. AR, Tab 5, Set-Aside D&F, at 1-2; Supp. CO Statement at 3-4.

#### Expectation of Two or More Proposals

KNAPP contends that the VA did not reasonably identify two or more small businesses that were capable of performing the agency's requirements. As an initial matter, the VA contends--and the protester does not dispute--that the CO reasonably expected that the agency would receive a proposal from R/X, the awardee under the unrestricted procurement. AR, Tab 5, Set-Aside D&F, at 1. We therefore address the CO's determinations with regard to the other two potential small business offerors identified in the set-aside D&F.

With regard to [deleted], the CO acknowledges that although the firm had submitted a proposal in response to the prior competition, the proposal had been found technically unacceptable. Supp. CO Statement at 2. The CO also states, however, that [deleted] was provided a post-award debriefing that identified the weaknesses and deficiencies in its proposal. Id. For this reason, the CO "anticipated that following the detailed debriefing [deleted] would address all of VA's concerns in the current solicitation." Id.

KNAPP contends that the CO could not reasonably find that [deleted]'s post-award debriefing would enable the firm to overcome the weaknesses and deficiencies in its technical proposal. As discussed above, however, a CO need only make a reasonable business judgment that a prospective offeror capable of performing the work is likely to submit a proposal; the CO is not required to conduct an actual determination of responsibility as part of this review. ViroMed Labs., supra; Ceradyne, supra. Here, the CO reasonably exercised his business judgment in concluding that the debriefing provided to [deleted] would permit the firm to submit an acceptable proposal. On this record, the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest.

With regard to [deleted], the CO states that the prospective offeror submitted a statement of capabilities and expressed its interest in participating in the competition. Supp. CO Statement at 2. The CO noted that [deleted] "made numerous different conveyor and robotic systems for a large variety of industries," and had performed contracts involving medical supplies and pharmaceuticals, including automated order fulfillment systems. Id. at 2-4. Based on the capabilities statement, the CO concluded that the prospective offeror "demonstrated significant experience in the commercial sector" and it would be able to meet the agency's requirements. Id.

KNAPP argues that [deleted] does not currently provide a TCA and has never performed the specific work required under the solicitation. The protester further argues that the statement of capabilities did not provide an adequate basis for the CO to conclude that [deleted] would submit an acceptable proposal because the firm had not reviewed the statement of work.

Nothing in the FAR requires a CO to consider only those prospective offerors who have successfully completed the identical requirements to be performed under the set-aside contract, nor does the FAR require a CO to exclude from consideration prospective offerors who have not reviewed a proposed statement of work. Instead, as discussed above, the CO may use any reasonable method to identify responsible prospective offerors. ViroMed Labs., supra. Here, the CO reasonably considered [deleted]'s statement of capabilities, and concluded that its experience performing automation and order fulfillment systems for commercial customers provided an adequate basis to expect that the firm would submit an acceptable proposal. On this record, the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest.<sup>1</sup>

#### Award at a Fair Market Price

Next, KNAPP argues that the CO did not have adequate information to conclude that award would be made at a fair market price. Specifically, the protester contends that the agency did not receive proposed prices from [deleted] or [deleted], or otherwise identify sufficient information to support the CO's conclusion.

The CO's set-aside D&F stated that a fair market price was anticipated because "[t]he national market has [] several companies available to fill this requirement," and "[t]his is a highly competitive market." AR, Tab 5, Set-Aside D&F, at 2. In response to the protest, the CO further explained that he anticipated that [deleted] would submit a proposal at a fair market price based on its similar contracts for the private sector. Supp. CO Statement at 3. The CO also stated that he intended to rely upon price competition to determine, for purposes of award, whether the proposed prices were reasonable. Id. at 4, citing FAR 15.404-1(b)(2)(i).

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<sup>1</sup> KNAPP also argues that the promotional literature provided by [deleted] suggests that it has too many employees to qualify for the applicable North American Industry Classification System (NAICS) code for this procurement. The record shows, however, that the agency confirmed, via the Central Contractor Registration website, that [deleted] had self-certified as a small business under the applicable NAICS code. Supp. CO Statement at 2. An agency may, for purposes of determining a small business' size status, reasonably rely on a potential offeror's self-certification. See Jensco Marine, Inc., B-278929.7, Feb. 11, 1999, 99-1 CPD ¶ 32 at 5.

As our Office has held, a CO may reasonably rely on an expectation that there will be adequate price competition to conclude that the competition will result in a fair market price. National Linen Serv., B-285458, Aug. 22, 2000, 2000 CPD ¶ 138 at 3. In this regard, the FAR provides that adequate price competition exists where two or more responsible offerors submit proposals that satisfy the government's requirements, award is based on a best value evaluation where price is a substantial factor, and the price of the successful offeror is not unreasonable. FAR §§ 15.403-1(c)(1); 15.404-1(b)(2)(i). A CO may reasonably rely on information concerning prior procurements, as well as the expectation of adequate price competition, to conclude that a procurement set aside for small businesses will be made at a fair market price. Based on this record, we think that the CO reasonably relied on the fact that R/X had been previously awarded the contract at a fair and reasonable price, and his conclusion concerning the prospective offerors' commercial experience, to conclude that there was an expectation of adequate price competition, and therefore an award at a fair market price. See National Linen Serv., supra, at 3-4.

The protest is denied.<sup>2</sup>

Lynn H. Gibson  
General Counsel

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<sup>2</sup> KNAPP also argues that the RFP contained unduly restrictive technical requirements. Because we conclude that the VA properly issued the solicitation as a total small business set-aside, we need not address this argument as the protester is not a small business and therefore not an interested party to challenge the terms of the solicitation. See 4 C.F.R. § 21.0(a)(1); Commonwealth Home Health Care, Inc., B-400163, July 24, 2008, 2008 CPD ¶ 140 at 3-4.