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# Decision

**Matter of:** CRAssociates, Inc.

**File:** B-418799

**Date:** September 10, 2020

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## DIGEST

Protest challenging agency's decision to set aside a procurement for service-disabled veteran-owned small businesses is denied where the agency reasonably concluded from its market research that there was a reasonable expectation of receiving proposals from at least two service-disabled veteran-owned small businesses capable of performing the required services at a fair and reasonable price.

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## DECISION

CRAssociates, Inc. (CRA), a large business located in Newington, Virginia, protests the terms of request for proposals (RFP) No. 36C25718R0842, issued by the Department of Veterans Affairs (VA) as a set-aside for service-disabled veteran-owned small businesses (SDVOSBs) to obtain medical care services for veterans at a community-based outpatient clinic (CBOC) in San Antonio, Texas. CRA, the current incumbent contractor, asserts that the VA's decision to set aside the procurement for SDVOSBs was unreasonable.

We deny the protest.

## BACKGROUND

The VA issued the RFP on January 15, 2020, as an SDVOSB set-aside, seeking proposals for the award of an indefinite-delivery, indefinite-quantity contract for a 1-year base period and four 1-year options to provide medical care services for veterans at a CBOC in San Antonio, Texas. RFP at 1, 166. The estimated patient load at the clinic for the base year is 3,000 patients per month, with patient enrollment estimated to

increase to 5,400 patients per month by the final option year. *Id.* at 6-8. The VA received proposals from [DELETED] SDVOSB offerors by the June 4 proposal due date: [DELETED].

Prior to issuance of the solicitation, the contracting officer conducted market research to inform its acquisition strategy. The record reflects that the contracting officer sought to identify potential SDVOSBs capable of performing the required services at reasonable prices by initially reviewing responses to a November 2017 sources sought notice. Based on the sources sought response data, the contracting officer identified three SDVOSB concerns that appeared capable of performing the agency's requirements. Agency Report (AR) exh. 6a, Market Research Report at 3. The contracting officer also reviewed the results of an industry day meeting with firms registered in the VA's Vendor Information Pages (VIP)<sup>1</sup> under North American Industry Classification System (NAICS) code 621498 (all other outpatient care centers), and the results of an internet search in the Small Business Administration's (SBA) dynamic small business database. That search identified no small business concerns. *Id.* at 2-3; Contracting Officer Statement at 3.

In January 2020, the contracting officer conducted additional market research to assess current market conditions.<sup>2</sup> The contracting officer searched the VIP database for VA-verified SDVOSB concerns. That search identified the following three SDVOSBs: (1) Clinovators, LLC, operating CBOCs for over 10 years, and starting three CBOCs in New Mexico; (2) Nephrology Rounding Solutions, Inc. dba Primary Care Solutions, currently performing one CBOC contract in Sherman, Texas, and four separate CBOC contracts in New Mexico; and (3) Potomac Valor Healthcare, LLC, currently operating a CBOC in Granbury, Texas. *Id.* exh. 6(b), Market Research Report Addendum at 1; Contracting Officer's Statement at 2.

The contracting officer also considered available data from recent solicitations of which he had personal knowledge. For CBOC services (RFP 25717R0506) in Granbury Texas, with a patient load of 1,600 per month, the VA received proposals from [DELETED] SDVOSBs and the contract was awarded to Potomac Valor JV. For CBOC services (RFP 25718R0246) in Sherman, Texas, with a patient load of 3,600 to 3,700 per month, the agency received proposals from three SDVOSBs and the contract was awarded to Primary Care Solutions Inc. *Id.* exh. 6(b), Market Research Report Addendum at 2; Contracting Officer Statement at 2-3. Finally, the agency received proposals from three SDVOSBs for CBOC services (RFP 25718R0773) and award is pending. Contracting Officer's Statement at 3.

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<sup>1</sup> The VA has designated the VIP as the database of businesses approved to participate in VA's veteran-owned small business program, and [www.VetBiz.va.gov](http://www.VetBiz.va.gov) as the Web portal that hosts the VIP. See 38 C.F.R. § 74.1.

<sup>2</sup> The contracting officer assumed responsibility for this procurement on December 30, 2018. Contracting Officer's Statement at 1.

The contracting officer analyzed the pricing data under these solicitations and found that the SDVOSB contractors offered a better per member per month (PMPM) price compared to the current large business contractor's PMPM price. *Id.* Specifically, at the Granbury CBOC site, the VA was paying a tiered PMPM price of [DELETED] for the first 700 patients, and [DELETED] from 700 to 1550 patients. When the same contract was awarded to an SDVOSB, there were no tiers and the prices averaged around [DELETED] PMPM. At the Sherman CBOC site, the large business PMPM price was [DELETED] compared to the SDVOSB PMPM price of [DELETED] for the first year and decreased to [DELETED] in the second year. At the Bridgeport CBOC site, the large business current PMPM price is [DELETED] compared to average proposed SDVOSB prices of [DELETED], [DELETED] and [DELETED] PMPM. The contracting officer concluded from his review of the SDVOSB contract prices that VA would be offered fair market prices. Contracting Officer's Statement at 2.

The information collected from the market research, together with his personal knowledge, led the contracting officer to conclude that there was a reasonable expectation that two or more SDVOSB concerns capable of performing the solicited requirements would respond to the RFP and that award could be made at a fair and reasonable price. Accordingly, the contracting officer decided to conduct this procurement as an SDVOSB set aside. Contracting Officer's Statement at 3.

CRA filed this protest challenging the VA's set-aside decision before the time set for receipt of proposals.

## DISCUSSION

CRA argues that the agency's decision to set aside the RFP for SDVOSB concerns was unreasonable and that the decision was not supported by adequate market research. Relying on its experience as the incumbent, CRA alleges that it is neither realistic nor reasonable to expect that an otherwise qualified SDVOSB would have the financial resources to "(1) fund and develop the project costs inclusive of the construction and lease costs of the increased sized facility; and (2) carry the significant account receivable costs pending payment on initial invoices." Protest at 5. According to CRA, an SDVOSB would need a line of credit of at least \$2.5 million dollars to fund these costs which, the protester believes, "would be impossible" to attain. Protest at 4. As a result, the protester contends that the competition should not be limited to SDVOSB concerns because the agency's market research cannot support a reasonable conclusion that proposals would be received from two or more SDVOSBs capable of performing the services at a fair and reasonable price.

The VA responds that it conducted and reviewed specific market research, considered the successful performance of similar services by SDVOSB concerns and reached a reasonable business judgment that the standards for an SDVOSB set aside have been met. In particular, the agency argues that its market research of prior procurements details the current capabilities of multiple SDVOSB concerns to start and continue operations at CBOCs in several states. Additionally, the agency argues that based on

its review of these CBOC contracts, it appropriately concluded that the contract prices were reasonable, and that issuing this RFP as an SDVOSB set aside would be proper. Finally, the agency points out that the reasonableness of the set aside determination was confirmed by the receipt of proposals from two SDVOSBs which were identified in its market research review of the VIP database. Agency Memorandum of Law at 2-6.

Under the Veterans Benefits, Health Care, and Information Technology Act of 2006, 38 U.S.C. § 8127, and the VA's implementing regulations, the VA is required to set aside acquisitions for SDVOSBs whenever it determines that there is a reasonable expectation of receiving offers from at least two SDVOSBs that are capable of performing the required work and that award can be made at a fair and reasonable price. 38 U.S.C. 8127(d); VA Acquisition Regulation (VAAR) 819.7005 (commonly referred to as the "rule of two" requirement. *CRAssociates, Inc.*, B-418194, Jan. 23, 2020, 2020 CPD ¶ 80 at 3-4, *Crosstown Courier Serv., Inc.*, B-410936, Mar. 12, 2015, 2015 CPD ¶ 107 at 4.

The determination as to whether there is a reasonable expectation of receiving offers from two or more SDVOSBs is a matter of informed business judgment within the contracting officer's discretion; our review generally is limited to ascertaining whether that official abused his or her discretion. *Id.* No particular method of assessing the availability of capable SDVOSB concerns is required. Contracting officers may consider procurement history, market surveys, advice from the agency's small business specialist, technical personnel, and information concerning prospective offerors' business history, capability, or capacity may all provide an adequate basis for a decision to set aside, or not set aside, a requirement for SDVOSBs. *Crosstown Courier Serv., Inc.*, *supra*; *FlowSense, LLC*, B-310904, Mar. 10, 2008, 2008 CPD ¶ 56 at 3. As explained below, we find no basis to sustain the protest.

The reasonableness of the VA's decision to set aside this procurement for SDVOSB competition is supported by adequate market research that is fully documented in the contemporaneous record. The record shows that the contracting officer identified multiple SDVOSB concerns through the agency's various market research efforts. Specifically relevant here, the contracting officer's research identifies at least three SDVOSBs that currently are performing CBOC contracts in several states that have the demonstrated capability to perform the solicited services at issue here. In addition, the market research report documents the results of three prior CBOC set asides in which the VA received proposals from three SDVOSB in response to each procurement. The VA awarded contracts under two of the three procurements, with contract award pending under the third CBOC solicitation. Additionally, as set forth above, the market research shows that the SDVOSB's PMPM prices were lower than the large businesses' PMPM prices, which supports the contracting officer's conclusion that the agency could expect to receive proposals from two or more capable SDVOSB concerns at fair and reasonable prices.

CRA opines that it is simply not possible for an SDVOSB meeting the designated size standard to perform the contract from a financial or operational standpoint. See

generally, Comments at 1-3. While CRA questions the adequacy and reliability of the agency's market research, characterizing it as conclusory, *id.* at 3-7, the record establishes that the agency's market research was thorough and based on numerous instances of SDVOSB concerns competing for, winning, and performing contracts for nearly identical services in the same geographic region at competitive prices. To the extent the protester argues that the agency was required to establish the financial capability of potential SDVOSBs, the protester is mistaken. In making set-aside decisions, agencies are not required to make actual determinations of responsibility or decisions tantamount to determinations of responsibility. See *Walker Development & Trading Grp., Inc.*, B-414365, May 18, 2017, 2017 CPD ¶ 151 at 2; *InfoReliance Corp.*, B-413298, Sept. 19, 2016, 2016 CPD ¶ 263 at 4. Rather, agencies need only make an informed business judgment that there is a reasonable expectation of receiving proposals from SDVOSB concerns that are capable of performing the contract at fair and reasonable prices. *Id.*

In short, we conclude that the contracting officer reasonably exercised his business judgment to set aside this procurement for SDVOSBs, and CRA's arguments to the contrary do not demonstrate that the contracting officer's decision was an abuse of discretion. See *Guardian Moving & Storage Co., Inc.*, B-410171, Nov. 6, 2014, 2014 CPD ¶ 334 at 4 n.2; *The Atlantic Co. of Am., Inc.*, B-293974, July 1, 2004, 2004 CPD ¶ 182 at 2 (receipt of proposals from multiple set-aside concerns essentially validates an agency's set-aside determination).

We reach the same conclusion with regard to CRA's assertions that the set-aside decision was unreasonable because the protester does not believe that an SDVOSB can comply with the limitations on subcontracting during the first performance year. According to the protester, "*it is actually impossible*" for an SDVOSB to comply with the subcontracting limitations during the first year based on the significant initial costs including construction and/or leasing of a facility, to start and operate the CBOC. Protest at 6-7 (emphasis in original).

Our Office will review an allegation that an offeror does not intend to comply with limitations on subcontracting only where there is evidence on the face of the proposal that should lead the agency to conclude that the offeror has not agreed to comply with the limitations. See *Express Med. Transp., Inc.*, B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 5-6. Otherwise, an agency's judgment as to whether a small business offeror will comply with the subcontracting limitations presents a question of responsibility, and the offeror's actual compliance is a matter of contract administration. Neither issue is subject to our review. See 4 C.F.R. 21.5(a), (c); *Geiler/Schrudde & Zimmerman*, B-412219 *et al.*, Jan. 7, 2016, 2016 CPD ¶ 16 at 7-8.

Here, nothing in the record before us supports these allegations. Not only are the protester's complaints in this regard speculative, but they again essentially raise arguments concerning the responsibility of the potential SDVOSB firms--as explained

above, an agency is not required to make a responsibility determination as part of its set-aside decision--and reflect disagreement with the contracting officer's judgment as to the viability of an SDVOSB set aside. Thus, the protester's arguments do not provide a basis to sustain the protest.

The protest is denied.<sup>3</sup>

Thomas H. Armstrong  
General Counsel

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<sup>3</sup> To the extent CRA's protest challenges other terms of the RFP, we do not address those issues. The protester acknowledges that it is not an SDVOSB concern; thus, the protester is ineligible to compete for an award under an RFP set aside for SDVOSB concerns. As a result, CRA is not an interested party to challenge other terms of the RFP and its remaining protest grounds are dismissed. See Bid Protest Regulations, 4 C.F.R. 21.0 (a); *DAI, Inc.*, B-408625, B-408625.2, Nov. 6, 2013, 2013 CPD ¶ 259 at 5.