



United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Logistics Health, Inc.

File: B-400157

Date: August 13, 2008

Tom Walch and Suzanne Witt-Botcher, Esq., for the protester.
Maj. William J. Nelson, Department of the Army, for the agency.
Paul E. Jordan, Esq., and John M. Melody, Esq., Office of General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency determination to set aside dental services procurement for exclusive small business participation was reasonable where market research identified eight small businesses, at least two of which appeared responsible and capable of performing the contract requirements.

DECISION

Logistics Health, Incorporated (LHI) protests the terms of request for proposals (RFP) No. W81K04-08-R-0036, a total small business set-aside, issued by the Department of the Army for a dental provider network. LHI, a large business, asserts that the agency improperly restricted the solicitation to small businesses.

We deny the protest.

The Army operates soldier readiness processing (SRP) stations at mobilization locations throughout the continental United States. The primary purpose of the SRP dental stations is to process and validate the dental readiness of Army Reserve soldiers. Due to facility and personnel constraints, it is necessary to refer some Army and other military service members to civilian providers near the SRP stations. The RFP sought proposals for provision of a dental network to meet these requirements at up to 14 locations and contemplated the award of a fixed-price indefinite-delivery, indefinite-quantity contract for a period of 1 year, with 4 option years.

LHI is currently providing a dental network under a sole-source contract, which was awarded in 2006 based on the agency's determination that it was the only

responsible source available and that no other services would satisfy the agency's requirements. See Federal Acquisition Regulation (FAR) § 6.302-1. LHI protested an earlier solicitation for these services on the basis that it was improperly restricted to service disabled veteran-owned small businesses (SDVOSB). In response to that RFP, the agency received only one proposal—which was non-compliant—and it thus canceled the solicitation; we dismissed the protest as academic (B-310934, Jan. 11, 2008). When the agency reissued the RFP as a small business set-aside, LHI filed this protest challenging the propriety of the set-aside determination. LHI asserts that the set-aside is improper because it believes that there are not two small businesses with demonstrated qualifications or past performance that can provide the services requested at all mobilization site locations.

An acquisition with an anticipated dollar value of more than \$100,000 must be set aside for small business concerns if the agency determines that there is a reasonable expectation that offers will be received from two or more responsible small business concerns, and that award will be made at a fair market price. FAR § 19.502-2(b). The use of any particular method of assessing the availability of small businesses is not required so long as the agency undertakes reasonable efforts to locate responsible potential competitors. National Linen Serv., B-285458, Aug. 22, 2000, 2000 CPD ¶ 138 at 2. The decision whether to set aside a procurement may be based on an analysis of factors such as prior procurement history, recommendations of appropriate small business specialists, and market surveys that include responses to sources sought announcements. Id.; SAB Co., B-283883, Jan. 20, 2000, 2000 CPD ¶ 58 at 1-2. Generally, our Office regards such a determination as a matter of business judgment, and we will not disturb that determination absent a clear showing that it was unreasonable. National Linen Serv., supra, at 2.

The agency's set-aside determination is unobjectionable. Prior to issuing the RFP, the contracting officer conducted market research using the small business dynamic search of the Central Contractor Registration database. This research revealed—under North American Industry Classification System (NAICS) code No. 621210 (offices of dentists)—two Section 8(a)-certified firms, two small disadvantaged firms, six SDVOSBs, nine veteran owned small businesses, and three woman-owned small businesses. Contracting Officer's Statement ¶¶ 6-7. The contracting officer also posted a request for information (RFI) on the Federal Business Opportunities (FedBizOpps) website. Eight small businesses responded to the RFI, including two small businesses, two veteran-owned small firms, and four SDVOSBs. Contracting Officer's Statement ¶ 8. Two of the companies, one a veteran-owned small business and the other an SDVOSB, provided information indicating that they were responsible and capable of performing the contract requirements. For example, each had numerous dentists available within the required SRP service radius.¹ The

¹ The contracting officer's record of market research contains detailed capability statements from the firms responding to the RFI. However, because the

(continued...)

contracting officer's market research indicated that there were a large number of small and large business vendors providing these services and she also found that pricing for the services would be competitively based. Agency Report, Tab 9, at 4.

We find that the agency's market research was thorough and reasonably conducted to identify potential small business offerors. Since the research identified multiple small businesses—at least two of which were deemed responsible and capable of performing the requirement—the record reasonably supports the contracting officer's finding of a reasonable expectation of receiving two or more proposals from small businesses and that award would be made at a fair market price. In short, we conclude that the contracting officer reasonably exercised her business judgment to set the procurement aside for small businesses.

Our conclusion is not changed by LHI's speculation that it is “extremely unlikely” that sufficient small businesses could have acquired the requisite expertise and past performance in the ensuing 18 months, since the agency awarded LHI's sole-source contract based on its being the only available contractor. Protest at 1. In this regard, the record shows that, of the eight small businesses responding to the RFI, six had experience ranging from 10 to 20 years.² AR, Tab 9. Further, the agency explains that it did not conduct extensive market research prior to making award to LHI, but awarded LHI's contract based on the need to deploy soldiers rapidly, the need to transition to a new contractor within 60 days, and LHI's existing network of providers. Contracting Officer's Statement ¶ 5. The agency states that failure to award to LHI at that time would have jeopardized the upcoming deployment of forces. Id.

LHI also asserts that the agency did not need to conduct a competition for this requirement. In the protester's view, the agency could have met its needs at a lower cost under LHI's recently awarded Reserve Health Readiness Program (RHRP) contract. However, LHI does not assert, and there is nothing in the record to establish, that the agency was required to obtain its dental services under the RHRP contract; LHI's desire to have the agency satisfy this requirement through LHI's contract does not establish that it was required to do so. Since the purpose of our bid protest function is to ensure that agencies obtain full and open competition to the maximum extent practicable, we will generally favor otherwise proper agency

(...continued)

procurement is ongoing, we have not included more specific information on their capabilities in this decision.

² LHI asserts that the agency had more than 60 days to decide how it would meet its needs at the time it awarded the sole-source contract. Comments at 4. However, even assuming that the protester is correct, this does not mean that responsible and capable small businesses were not then available; the agency simply had not done the market research to make that determination.

actions--like the one here to use a competitive set-aside solicitation--that are taken to increase competition. Knowledge Connections, Inc., B-297986, May 18, 2006, 2006 CPD ¶ 85 at 4.

The protest is denied.

Gary L. Kepplinger
General Counsel