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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Crosstown Courier Service, Inc.

**File:** B-407404

**Date:** November 30, 2012

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Christopher J. Noyes for the protester.

Russell L. Emery, Esq., Department of Veterans Affairs, for the agency.

Paul E. Jordan, Esq., and David A. Ashen, 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 not to set aside a procurement for service-disabled veteran-owned small businesses (SDVOSB) is denied where the agency concluded from its market research that it did not have a reasonable expectation of receiving proposals from two or more SDVOSBs capable of performing the required services.

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### DECISION

Crosstown Courier Service, Inc. (CCS), of Chicopee, Massachusetts, protests the terms of Department of Veterans Affairs' (VA) request for proposals (RFP) No. VA-259-11-RP-0115, a small business set-aside, for medical courier and dry ice delivery services for the VA Salt Lake City (Utah) Health Care System (VASLCHCS). CCS, a service-disabled veteran-owned small business (SDVOSB) concern, asserts that the VA should have set the procurement aside for SDVOSBs.

### BACKGROUND

The RFP sought proposals for all necessary labor, equipment, and transportation services for pick-up and delivery each week-day between the VASLCHCS and (1) the Ogden (Utah) VA community Based Outpatient Clinic (CBOC), Pocatello (Idaho) VA CBOC, Elko (Nevada) VA CBOC, and Idaho Falls (Idaho) CBOC, constituting the Northern Area; and (2) the Orem (Utah) VA CBOC, Nephi (Utah) VA CBOC, and Price (Utah) Primary Care Tele-Outreach Clinic, comprising the Southern Area. The courier services in both areas include delivery of dry ice, and pick-up of pharmaceuticals, supplies, x-rays, lab specimens, patient records, office supplies, forms, and other items as required. The RFP included four evaluation

factors, in descending order of importance: technical capability (ability to deliver services at the times and frequencies requested); past performance; veteran-owned small business (VOSB) or SDVOSB status (VOSBs receiving partial and SDVOSBs receiving full credit); and price. All non-price factors, combined, are significantly more important than price.

In February 2011, prior to issuing the RFP, the contracting officer conducted market research of firms with North American Industry Classification System (NAICS) code No. 492110 (courier services) using the Veterans Information Pages (VIP)<sup>1</sup> and the Central Contract Registration (CCR) databases. Based on her VIP research, the contracting officer found 63 SDVOSBs/VOSBs and 52 SDVOSBs. Contracting Officer's Statement at 4. However, the initial search identified only a single vendor in Utah (and none in Idaho), but it was no longer in the VIP database when the search was repeated in August 2011. Id. At that time, the contracting officer found no SDVOSBs with NAICS code No. 492110 in Utah or Idaho. The CCR search identified 1,315 small businesses with that NAICS code, 412 of which represented themselves as VOSBs, and 244 of which represented themselves as SDVOSBs. Of these, there were 7 small businesses in Utah and 8 in Idaho, but none in either state was identified as an SDVOSB or VOSB. Because there were no SDVOSB/VOSB concerns in Utah or Idaho, where the majority of delivery sites are located, the contracting officer determined that there was no expectation of two or more SDVOSBs that would respond to the RFP. Id. Based on the 15 Utah and Idaho small businesses with the appropriate NAICS code, she instead set the procurement aside for small business concerns. Prior to the closing time for receipt of proposals, CCS submitted both an offer and this protest.

## DISCUSSION

CCS raises a number of arguments challenging the VA's determination to set aside the procurement for small businesses rather than for SDVOSBs. We have considered all of the protester's arguments and find that none provide a basis to object to the VA's decision to set aside the RFP for small businesses. This decision addresses CCS's primary arguments.

CCS asserts that the VA failed to perform sufficient market research to ascertain the interest and capability of SDVOSBs to perform the requirement. Specifically, the protester notes that there are at least two capable SDVOSB firms: CCS which is performing a VA courier contract in Montana, administered by the same contracting officer, and another SDVOSB courier firm, Medical Logistics, which is located in

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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.gov](http://www.VetBiz.gov) (VetBiz) as the Web portal that hosts the VIP. See 38 C.F.R. § 74.1.

Utah. Given these two firms, CCS concludes that the contracting officer abused her discretion in failing to set the procurement aside.

Under the Veterans Benefits, Health Care, and Information Technology Act of 2006, 38 U.S.C. §8127, and the VA's implementing regulations, VA Acquisition Regulation (VAAR) §§ 819.7004, 819.7705, the VA is required to set aside acquisitions for SDVOSBs whenever it determines that there is a reasonable expectation that offers will be received from at least two SDVOSB firms and that award can be made at a fair and reasonable price. 38 U.S.C. § 8127(d); VAAR § 819.7005. The determination as to whether there is a reasonable expectation of receiving offers from two or more SDVOSB firms that are capable of performing the required work is a matter of informed business judgment within the contracting officer's discretion that we will not disturb absent a showing that it was unreasonable. Buy Rite Transport, B-403729, B-403768, Oct. 15, 2010, 2010 CPD ¶ 245 at 3. The requirements of the 2006 VA Act do not dictate the use of any particular methodology in assessing the availability of SDVOSB firms to perform a requirement; measures such as prior procurement history, market surveys, advice from the agency's small business specialist, and information concerning prospective offerors' business history and capability or capacity may all provide a reasonable basis for a decision to set aside, or not set aside, a requirement for SDVOSBs. FlowSense, LLC, B-310904, Mar. 10, 2008, 2008 CPD ¶ 56 at 3.

The contracting officer's market research and resulting set-aside determination were reasonable. In this regard, the statements of work for the two regions required the successful contractor to provide labor, equipment, and transportation services each week-day for pick-up and delivery between the VASLCHCS in Salt Lake City, Utah and four VA clinics each in the northern and/or southern regions (covering Utah, Idaho, and Nevada). RFP at 7-9. While the RFP did not restrict competition to firms located in this geographical area, there was nothing unreasonable in the contracting officer's market research focusing on that area and the likelihood of whether firms from outside it would respond to the RFP. See American Connecting Source d/b/a Connections, B-276889, July 1, 1997, 97-2 CPD ¶ 1 at 3 (agencies may properly restrict procurements to offerors within a specified geographical area if the restriction is reasonably necessary for the agency to meet its minimum needs).

Here, using the NAICS code for courier services (No. 492110), the contracting officer searched both the VIP and CCR databases to identify available firms. While the CCR database identified hundreds of VOSB and SDVOSB firms, none of them were located in the states of Utah or Idaho where the majority of the courier work is to be performed. Likewise, of the more than 50 (courier) SDVOSBs found in the VIP database, the contracting officer ultimately found none that were located in Utah or Idaho. Although she initially found one such firm located in Utah, her subsequent search found that the firm was no longer listed, and the firm identified

by CCS in its protest is no longer listed in VIP.<sup>2</sup> Neither of these firms would be eligible for award under an SDVOSB set-aside. As for CCS, while it is an SDVOSB, it is currently performing its VA courier contract in Montana, not in the states encompassed by this procurement. In any case, even if the VA had considered CCS's interest, the firm represents only one SDVOSB and the protester has not identified any other VIP-eligible SDVOSB that would be interested in competing for this requirement. Given the large geographical area and the daily nature of the work covered by the RFP, the contracting officer reasonably concluded that there was no expectation that two or more SDVOSBs from outside this area would respond to the solicitation. Contracting Officer's Statement at 4.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>2</sup> Our own search of the VIP database identified 67 SDVOSB and VOSB firms, but none of them were located in Utah, Idaho, or Nevada where the services are to be performed.