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## Decision

**Matter of:** Guardian Moving & Storage Co., Inc.

**File:** B-410171

**Date:** November 6, 2014

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David J. Taylor, Esq., Montgomery Fazzone & Taylor, PLLC, for the protester. Marvin Kent Gibbs, Esq., Department of the Air Force, and Laura Mann Eyester, Esq., Small Business Administration, for the agencies. Kenneth Kilgour, 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 that agency improperly failed to set aside procurement for Historically Underutilized Business Zone (HUBZone) small business concerns is denied, where record indicates that agency market research identified only one HUBZone firm was interested in procurement, and the agency instead reasonably decided on a small business set-aside.

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### DECISION

Guardian Moving & Storage Co., Inc., of Hunt Valley, Maryland, a Historically Underutilized Business Zone (HUBZone) small business concern, protests the terms of request for proposals (RFP) No. HTC711-14-R-R011, issued by the United States Transportation Command (USTRANSCOM) for non-temporary storage of household goods and unaccompanied baggage. The protester asserts that the agency improperly failed to set aside the procurement for HUBZone firms.

We deny the protest.

### BACKGROUND

The agency has historically satisfied its requirement for storage of household goods and baggage through two procurements, one for the East Coast and one for the West Coast. Guardian is the incumbent contractor for the East Coast, which had been set aside for small businesses. In order to explore the feasibility of combining those procurements while maintaining them as set-asides, the agency issued a request for information (RFI) that was posted on the Federal Business Opportunities

(FedBizOps) website on February 28, 2014. Agency Report (AR), Exh. 7, RFI. The agency also provided notice of the RFI posting to the incumbent contractors and all other companies that had previously responded to an earlier, similar announcement. AR, Exh. 16, Market Research Report at 2.

Potential offerors were asked to respond to a series of questions, including whether the firms considered it appropriate to combine the requirements and whether the firms would be interested in providing services to both coasts. Market Research Report at 8, 23-24. Six of the seven firms that responded were small businesses. Id. Of those six small businesses, one (Guardian) was a HUBZone small business concern, one a woman-owned small business, and one a small disadvantaged business. Id. All of the respondents were interested in providing service on both coasts, while five of the respondents (including Guardian) stated that a single service provider would be appropriate. Id. at 15, 30-31. According to Guardian, “[t]he benefit of a single service provider is the cost savings to be achieved . . . .” Id. at 30. The agency checked the System of Award Management (SAM) to validate the vendors’ registration and business information. The contracting officer considered these responses and determined that, while it was unlikely that two or more HUBZone businesses would submit proposals, it was reasonable to expect at least two offers from small businesses. Id. at 6-7. The agency therefore decided, with the concurrence of the agency’s small business specialist and the Small Business Administration (SBA), to set the procurement aside for small businesses. See AR, Exh. 13, Small Business Coordination Record.

The resulting RFP provided for award to one or more small business concerns of up to two fixed-price requirements contracts for the storage of household goods and baggage, for a term of 1 year with four 1-year options. Offerors could submit proposals for either the East or West Coast requirements, or both. RFP at 3-5, 55-61. Award would be made on a low cost, technically-acceptable basis. Id. at 23. The agency estimated the value of this procurement as approximately \$41 million, for the base year and all option periods, for both coasts. This protest followed.

## DISCUSSION

Guardian challenges the agency’s decision not to set aside the procurement for HUBZone firms, asserting that the market research was inadequate and failed to account for a “plethora” of eligible HUBZone companies. Protest at 3. The agency maintains that it conducted adequate market research and reasonably set aside the procurement for small business concerns. Contracting Officer’s Statement of Facts (COSF) at 11.

The Federal Acquisition Regulation (FAR) requires that acquisitions exceeding the simplified acquisition threshold, as here, be set-aside for small businesses when there is a reasonable expectation that offers will be obtained from at least two

responsible small business concerns and award will be made at a fair market price. See FAR § 19.502-2(b). However, the applicable regulations further require that the contracting officer

shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD [business development], HUBZone, SDVO SBC [service-disabled veteran-owned small business concern] or WOSB [women-owned small business] programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted.

13 C.F.R. § 125.2(f)(2); see FAR §§ 19.203, 19.502-2(b). Further, the FAR provides that

(d) In determining which socioeconomic program to use for an acquisition, the contracting officer should consider, at a minimum--

- (1) Results of market research that was done to determine if there are socioeconomic firms capable of satisfying the agency's requirement; and
- (2) Agency progress in fulfilling its small business goals.

FAR § 19.203(d).

A contracting officer's determination of whether to set aside an acquisition for small businesses "is a matter of business judgment within the contracting officer's discretion that we will not disturb absent a showing that it was unreasonable." DNO Inc., B-406256, B-406256.2, March 22, 2012, 2012 CPD ¶ 136 at 4. While the use of any particular method of assessing the availability of firms is not required, measures such as prior procurement history, market surveys, and advice from the appropriate small business specialists may all constitute adequate grounds for a CO's decision to set aside, or not to set aside, a procurement. American Imaging Servs., Inc., B-246124.2, Feb. 13, 1992, 92-1 CPD ¶ 188 at 3. The assessment must be based on sufficient facts so as to establish its reasonableness. Rochester Optical Mfg. Co., B-292247, B-292247.2, Aug. 6, 2003, 2003 CPD ¶ 138 at 5.

Guardian objects to the reasonableness of the agency's market research because, the protester argues, the agency failed to perform HUBZone-specific research, and instead focused on the more general question of whether to set aside the procurement for small business concerns. Comments on AR at 7. As noted above,

however, no particular method of market research is required. Here, the agency posted an RFI on the FedBizOps website, and it sent notice of the RFI to the incumbent contractors and all other companies that had responded to an earlier announcement. Market Research Report at 2. The agency also considered historical acquisition information, previous market research, and information available on the Internet. Id. Through the responses to the RFI, the agency collected information on the size status of the respondents, which enabled the agency to identify only one of the interested firms as a HUBZone small business. Id. at 1-2. Further, with respect to progress in meeting set-aside goals, the record indicates that the agency met or exceeded its HUBZone set-aside goal for fiscal year 2013, and the agency exceeded its goal by 154 percent and 109 percent for the first and second quarters of fiscal year 2014, respectively. COSF at 14. In addition, as noted above, the agency coordinated with, and received concurrence from, the agency's small business specialist and the SBA, for its procurement approach. See AR, Exh. 13, Small Business Coordination Record.<sup>1</sup>

In sum, while the protester asserts that the agency could have conducted more rigorous market research, it has failed to demonstrate that the measures taken by the agency in deciding on a small business set-aside were unreasonable or otherwise failed to meet the applicable requirements. Indeed, Guardian has failed to identify additional HUBZone small businesses interested in competing for this requirement that were denied an opportunity of expressing interest by defects in the agency's market research.<sup>2</sup> Thus, we find no basis to question the reasonableness of the agency's market research and the subsequent decision to set aside this requirement for small businesses.

Guardian also asserts that the agency engaged in improper consolidation of requirements in violation of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(a)(1) (2000). In this regard, CICA generally requires that solicitations include specifications which permit full and open competition and contain restrictive provisions and conditions only to the extent necessary to satisfy

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<sup>1</sup> We invited the comments of the SBA, which noted the record of success the agency has had in meeting its HUBZone set-aside goals, and concluded that the agency had conducted sufficient market research. SBA Comments, Sept. 12, 2014 at 5 n.2 & 6.

<sup>2</sup> In this regard, even if we agreed with Guardian that the agency's market research was inadequate, GAO will consider the proposals actually received in determining whether a set-aside decision was reasonable. See IBV, Ltd., B-311244, Feb. 21, 2008, 2008 CPD ¶ 47 at 2 n.2; The Atlantic Co. of Am., Inc., B-293974, July 1, 2004, 2004 CPD ¶ 182 at 2. Here, the agency received only one proposal from a HUBZone small business and six others from small businesses, which substantiates the reasonableness of the agency's decision to set aside this procurement for small businesses.

the needs of the agency. See 10 U.S.C. §§ 2305(a)(1)(A), (B). Since consolidated procurements may combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can furnish only a portion of the requirements. Aalco Forwarding, Inc., et al., B-277241.12, B-277241.13, Dec. 29, 1997, 97-2 CPD ¶ 175 at 6. In interpreting CICA, we have assessed whether an agency has a reasonable basis for its contention that the consolidation is required to meet its needs, and have sustained protests only where no reasonable basis is demonstrated. Major Contracting Services, Inc., B-406980, October 10, 2012, 2012 CPD ¶ 288 at 4.

According to the protester, the consolidation precludes businesses capable of performing the requirement for only one coast from participation in the competition. Protest at 4. However, having responded to the agency's inquiry during its market research by asserting that consolidation was appropriate, and indeed would result in cost savings, Market Research Report at 30, Guardian cannot now assert that consolidation would be inappropriate. The integrity of the protest process does not permit a protester to espouse one interpretation or position during the procurement, and then argue during a protest that the interpretation or position is unreasonable or otherwise improper. Northrop Grumman Space and Missile Systems Corp.; Textron Marine & Land Systems Corp., B-400837 et al., Feb. 17, 2009, 2009 CPD ¶ 52 at 10; IBM Global Bus. Servs., B-298833.4, B-298833.5, Mar. 1, 2007, 2007 CPD ¶ 82 at 6; Northrop Grumman Sys. Corp., B-298954 et al., Jan. 12, 2007, 2007 CPD ¶ 63 at 8; BST Sys., Inc., B-298761, B-298761.2, Dec. 1, 2006, 2007 CPD ¶ 62 at 6; AAI Eng'g Support Inc., B-257857, Nov. 16, 1994, 95-1 CPD ¶ 2 at 3-4. In any case, the RFP makes clear that offerors may propose to satisfy the requirement for services on either coast, or both coasts; it is not the case that firms capable of performance on only a single coast are precluded from the competition. Moreover, Guardian's proposal offered to satisfy the agency's requirements for both coasts. Guardian Proposal at 2. If, in fact, the solicitation language limits competition from other small businesses, that limitation would be to Guardian's benefit, not detriment. enrGies, Inc., B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 9-10 (prejudice is an essential element of every viable protest, and where none is shown or otherwise

evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper).<sup>3</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>3</sup> Guardian also argues that the solicitation is unduly restrictive of competition because it unreasonably required vendors for the West Coast portion of the requirement to provide warehouse space within 50 miles of Oakland. Protest at 7. However, in response to the agency's inquiry during its market research, Guardian stated that the agency "is best served if the warehouse facilities are located within 50 miles of the port for important reasons." Market Research Report at 29. Again, the integrity of the protest process does not permit a protester to espouse one interpretation or position during the procurement, and then argue during a protest that the interpretation or position is unreasonable or otherwise improper. Northrop Grumman Space and Missile Systems Corp.; Textron Marine & Land Systems Corp., supra.