



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Encompass Group, LLC

**File:** B-406346

**Date:** March 23, 2012

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H. K. Tyler Jr., for the protester.  
Maura C. Brown, Esq., Vanessa L. Calabrese, Esq., and Philip S. Kauffman, Esq.,  
Department of Veterans Affairs, for the agency.  
Linda C. Glass, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Protest that solicitations for towels, washcloths, laundry bags and isolation gowns should not be set aside for service-disabled veteran-owned small business (SDVOSB) concerns because there are no SDVOSB concerns that actually manufacture or assemble textiles to the degree specified by the agency is denied, where agency found from market research two or more SDVOSB concerns that could provide the items manufactured by small businesses at fair market prices.

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### DECISION

Encompass Group, LLC, of Chicago, Illinois, protests the terms of request for proposals (RFP) Nos. VA797N-12-R-0021, VA797N-12-R-0026, VA797N-12-R-0027, and VA797N-12-R-0028, issued by the Department of Veterans Affairs (VA).

We deny the protest.

### BACKGROUND

The RFPs were set aside for service-disabled veteran-owned small business (SDVOSB) concerns, and identified applicable North American Industry Classification System (NAICS) codes.<sup>1</sup> Each solicitation informed offerors that

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<sup>1</sup> RFP -0021, issued for bath towels, identified NAICS code 314129; RFP -0026, issued for washcloths, identified NAICS code 314129; RFP -0027, issued for laundry bags, identified NAICS code 314911; and RFP -0028, issued for isolation

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award would be made on a lowest-priced, technically acceptable basis. See RFP -0021 amend. 6, at 2; RFP -0026 amend. 2, at 2; RFP -0027 amend. 4, at 2; RFP -0028 amend. 1, at 2.

Prior to issuing the RFPs, the contracting officer conducted market research, including posting a sources sought notice on the FedBizOpps website, to determine whether the agency would have a reasonable expectation of receiving offers from two or more eligible SDVOSBs and that award would be made at a fair and reasonable price. Contracting Officer's Statement at 1; see also, e.g., Agency Report (AR), Tab 2, Presolicitation Notice, RFP -0021. For each of the solicitations, the contracting officer found that there were numerous SDVOSBs interested in, and capable of performing, the solicitations' requirements.<sup>2</sup> Contracting Officer's Statement at 2-4. The contracting officer also identified small business manufacturers who were capable of supplying the solicited items to an SDVOSB concern under the contract. Id.

## DISCUSSION

Encompass, which is not a SDVOSB concern, complains that the RFPs should not have been set aside for SDVOSB concerns. The protester contends that there are no SDVOSB concerns that can actually manufacture or assemble textiles in accordance with the solicitation requirements. Encompass also complains that the agency's market survey did not adequately consider the application of the Buy American Act.

The Veterans Benefits, Health Care, and Information Technology Act of 2006, 38 U.S.C. §§ 8127-8128 (2006), provides the VA with independent authority to set aside contracts for SDVOSB and Veteran-Owned Small Business (VOSB) concerns. The Act provides that SDVOSB firms receive first priority for VA contract awards, and that VOSB firms receive second priority. 38 U.S.C. § 8127(i). Further, under the Act, acquisitions must be set aside for SDVOSB firms if the VA determines that there is a reasonable expectation that offers will be received by at least two SDVOSB firms and that award can be made at a fair and reasonable price. 38 U.S.C. § 8127(d). Generally, a procurement set-aside determination is a business judgment within the contracting officer's discretion, which we will not

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gowns, identified NAICS code 315211. Each of these NAICS codes specified a small business size standard of 500 or fewer employees.

<sup>2</sup> In fact, the VA has received proposals from more than two SDVOSBs under each of the RFPs. Although the agency has not yet completed its evaluation of proposals, the VA is confident that the contracts will be awarded at a fair and reasonable price. Contracting Officer's Statement at 5.

disturb absent a showing that it was unreasonable. Eagle Home Med. Corp.-Costs, B-299821.3, Feb. 4, 2008, 2008 CPD ¶ 41 at 2.

Here, Encompass does not show that the VA's set-aside determination was unreasonable. As noted above, the agency conducted market research from which it determined that there were a number of SDVOSBs that appeared capable and interested in performing these requirements.<sup>3</sup> The agency also determined that there were small business manufacturers from which the VA had obtained the solicited items in the past, and from which non-manufacturing SDVOSBs could obtain the items for sale to the VA. Although Encompass generally contends that the SDVOSBs will not be able to satisfy all of the solicitation requirements, we find that these general and speculative arguments do not show that the VA's business judgment was unreasonable. Moreover, in this regard, we do not agree with the protester's apparent belief that the VA was required to determine prospective offerors' technical acceptability or responsibility in order to determine whether it was likely that it would receive offers from two or more SDVOSBs that appeared capable of performing and that award could be made at a fair and reasonable price.

Encompass also challenges a number of other aspects of the RFPs, including the NAICS code assigned to each solicitation and the basis for award. With respect to the assignment of NAISC codes, challenges to the selected standard industrial classification are heard solely by the Small Business Administration, and not reviewed by GAO. 4 C.F.R. § 21.5(b)(1) (2011). With respect to the protester's remaining challenges to the solicitations, Encompass is not an interested party to raise these concerns, given that Encompass is not an eligible SDVOSB and therefore is not a prospective offeror. 4 C.F.R. §§ 21.0(a), 21.1(a); see also Encompass Group LLC, B-296602, B-296617, Aug. 10, 2005, 2005 CPD ¶ 159 at 4-5.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>3</sup> Although not mentioned by the VA, we note that a number of the SDVOSBs identified in the agency's market research are listed in the agency's Veterans Information Pages database on its VetBiz website as verified and eligible SDVOSBs under each of the NAICS codes identified.