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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

*P. Williams
Prot. T*

FILE: B-189992

DATE: November 11, 1977

MATTER OF: Matthews International Corporation

DIGEST:

Contrary to protester's suggestion, awards made to small business under non-set-aside portion of procurement do not serve to reduce quantity of items to be awarded under set-aside portion.

This is a protest by Matthews International Corporation (Matthews) concerning Invitation for Bids (IFB) 101(42)-3-78 issued by the Veterans Administration (VA) for an indefinite quantity requirements type contract for grave markers for fiscal year 1978.

The solicitation requested bids from unrestricted sources (both large and small businesses) for a total estimated quantity of 54,250 markers. An equal estimated number of markers was set aside exclusively for small business concerns. The protester alleges that subsequent to bid opening it became aware that VA intended to select contractors for the non-set-aside quantity on a state-by-state basis, thus reserving half of each state's requirements for small business concerns. The firm objects to this procedure because small business concerns could receive contracts under both the restricted and unrestricted portions in excess of half of the Government's total requirements. In other words, the protester objects to restricting competition for the set-aside quantity to the extent that partial awards under the non-set-aside portion will be made to small business concerns.

Initially, we note that VA has been awarding contracts on a state-by-state basis for a number of years and that Matthews has bid on similar requirements contracts in the past. Even though Matthews protested after bid opening we believe the protest is timely because it concerns the VA's intention to make partial awards under the non-set-aside portion and this procedure is not clearly explained in the solicitation. In this connection we are recommending to VA that future solicitations be more explicit in this regard.

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We believe that Matthews has misconstrued the procedures for partial set-asides, generally, and as they apply to this procurement. A small business concern is not precluded from bidding on the non-set-aside portion of a procurement. Federal Procurement Regulations (FPR) 1-1.706-6(e) (1964 ed.) provides that awards on the non-set-aside portion shall be made in accordance with normal procurement procedures, i. e., on an unrestricted basis to the low responsive, responsible bidder. Moreover, to be eligible for award on the set-aside portion, a small business firm must bid on the non-set-aside portion of the procurement. FPR § 1-1.706-6(c) (1964 ed.). Because a large business cannot receive an award on the set-aside portion of a procurement, those quantities which are set-aside must be awarded to small business.

In view of the above, contrary to the suggestion of Matthews, a large business, awards made to small business concerns under the non-set-aside portion of the procurement do not serve to reduce the quantity of items to be awarded under the set-aside portion. Whether or not a small business is the low responsive bidder on the non-set-aside portion, applicable regulations permit a small business concern to be considered for the set-aside portion. The 50 percent partial set-aside is a procedure to insure that small business will receive at least 50 percent of the quantities ordered; it is not a maximum quantity.

The Small Business Act, 15 U.S.C. § 631 et seq. (1970) establishes a national policy of placing a fair proportion of the total procurement contracts with small business concerns. See 15 U.S.C. § 631(a), 644. Contrary to the contention of Matthews, this does not mean that there must be an equal division between large and small businesses of the set-aside and non-set-aside portions of the work.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States