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DECISION



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

10,102

FILE: B-194147

DATE: May 10, 1979

MATTER OF: Otis Elevator Company

DIGEST:

[Protest against total small business set-aside] is denied since contracting officer did not abuse his discretion in determining, pursuant to DAR § 1-706.5 (a)(1), that there was reasonable expectation that offers would be obtained from sufficient number of responsible small business concerns at reasonable prices.

CNG 00990

Otis Elevator Company (Otis) protests the total small business set-aside determination for the renovation of two existing passenger elevators at McDonald Army Hospital, Fort Eustis, Virginia, under invitation for bids (IFB) No. DACA65-79-B-0014, issued February 5, 1979, by the Corps of Engineers (Corps), Norfolk, Virginia.

AGC 00539

AGC 00746

Four bids were received by the February 28, 1979, opening date as follows:

Webster Elevator Company	\$24,900.00
Virginia Elevator Company	39,970.00
Old Dominion Elevator Company	46,280.66
Otis Elevator Company	62,500.00

All the firms submitting bids were small business concerns except Otis.

Otis contends that at the time the IFB was issued as a total small business set-aside the contracting officer did not have a reasonable expectation that bids would be received from a sufficient number of responsible small business concerns so that award could be made at a reasonable price. Otis states

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that the contracting officer's decision to set aside the subject procurement for small business based upon the previous elevator project was arbitrary, capricious and without a rational basis since that procurement occurred nearly 2-1/2 years ago at a different location and called for less sophisticated work than the complete renovation of two elevators. Further, Otis asserts that this set-aside determination was not required by any law or regulation.

Section 15 of the Small Business Act, 15 U.S.C. § 644 (1976), and 10 U.S.C. § 2301 (1976) reflect a congressional policy of aiding small business by requiring the procurement of a fair proportion of Government property and services from small business concerns. Further, Defense Acquisition Regulation (DAR) § 1-706.5(a)(1) (1976 ed.) provides:

"Subject to the order of precedence established in 1-706.1(a), the entire amount of an individual procurement or a class of procurements, including but not limited to contracts for maintenance, repair, and construction, shall be set aside for exclusive small business participation (see 1-701.1) if the contracting officer determines that there is reasonable expectation that offers will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. Total set-asides shall not be made unless such a reasonable expectation exists. * * * Although past procurement history of the item or similar items is always important, it is not the only factor which should be considered in determining whether a reasonable expectation exists."

The decision to set aside a particular procurement exclusively for small business is basically a judgment which requires the exercise of broad discretion by the contracting officer. Hawthorn Melody Inc., B-190211, November 23, 1977, 77-2 CPD 406. Further, our Office

has held that the determination as to whether a reasonable expectation exists for adequate competition from small business firms is within the ambit of sound administrative discretion of the agency and we will not substitute our judgment for that of the contracting officer in the absence of a clear showing of abuse of the discretion permitted him. See J. H. Rutter Rex Manufacturing Co., Inc., B-190905, July 11, 1978, 78-2 CPD 29; DeWitt Transfer and Storage Co., B-182635, March 26, 1975, 75-1 CPD 180, and cases cited therein.

The record in this case does not indicate that the contracting officer abused his discretion in restricting the procurement to small business. In this connection, the contracting officer noted that in a "previous response to a similar job * * * we had eight plan holders and received three bids that were reasonable as to price. There was no reason to assume that this would not be the case in this procurement." The contracting officer states that, in view of the previous elevator project, it was concluded that there was adequate small business competition to assure reasonable prices for the current elevator project. Otis has submitted no evidence which refutes the contracting officer's statement. The prices received from the three small business firms appear to be reasonable and the low bid was substantially less than the price submitted by Otis.

Therefore, we find no legal basis to object to the decision to set aside the procurement for small business concerns.

Accordingly, Otis' protest is denied.

R. F. K. H. W.
Deputy Comptroller General
of the United States