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DECISION



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

FILE:B-195873

DATE: December 19, 1979

MATTER OF: Otis Elevator Company C990

[Protest of Air Force IFB]
DIGEST:

1. Protester which is not current contractor for elevator maintenance is not interested party so that it can protest inclusion of certain work under solicitation which it believes should be performed under current maintenance agreement.
2. Protest against total small business set-aside is denied because protester's contention that contracting officer abused her discretion in making that determination is based upon speculative allegations.
3. GAO will not consider protest concerning small business size standard since Small Business Administration is empowered to conclusively determine such matters.

2 Otis Elevator Company (Otis) protests invitation for bids (IFB) FO8651-79-B-0177 which was issued by the Armament Development and Test Center, Eglin Air Force Base, Florida (Air Force), and requested bids for the repair and rehabilitation of three elevators that are located in the base hospital and have been under full maintenance contracts since their installation in 1967. Otis maintains that: (1) much of the proposed work should be performed under the current maintenance contract; (2) the procurement should not have been set-aside for small business; and (3) if the procurement was properly set aside for small business, then for purposes of determining the appropriate small business size standard, the project should have been classified as repair and rehabilitation services rather than construction. However, for the reasons indicated below, we find no legal basis to object to the conduct of this procurement. D101

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Under section 20.1(a) of our Bid Protest Procedures, 4 C.F.R. part 20 (1979), a party must be "interested" in order to have its protest considered by our Office. Whether a party is sufficiently interested depends on its status in relation to the procurement, the nature of the issues raised, and how these circumstances show the existence of a direct and/or substantial economic interest on the part of the protester. See Die Mesh Corporation, 58 Comp. Gen. 111 (1978), 78-2 CPD 374.

Here, the record indicates that Otis is not the contractor presently responsible for the maintenance of the three elevators in question. Under the circumstances, we do not believe that Otis has a sufficient economic interest to complain that some of the proposed work ought to be done under the current maintenance contract. Therefore, Otis is not an interested party in regard to this issue, and this ground of the protest is dismissed.

The key to the Otis protest is the argument that the contracting officer's decision to totally set aside this procurement for small business is arbitrary, capricious and without any rational basis. According to Otis, the decision to make this procurement a total small business set-aside is in violation of Defense Acquisition Regulation (DAR) § 1-706.5(a)(1) (1976 ed.) and constitutes an abuse of discretion. Otis points out that for a number of years small business concerns have performed the maintenance on the three elevators involved in this procurement. In Otis' opinion, the need for the Air Force to include in the IFB a requirement for the replacement of certain parts indicates that the maintenance service provided has been inadequate. Further, Otis contends that the contracting officer anticipated that the bidders on the current solicitation would have the same qualifications as the successful bidders on the maintenance contracts. Since, according to Otis, these successful maintenance contractors have performed in a highly unsatisfactory manner, it believes that the contracting officer could not have had a reasonable expectation, as DAR § 1-706.5(a)(1) requires for a total small business set-aside, that offers could be obtained from at least two responsible small business concerns.

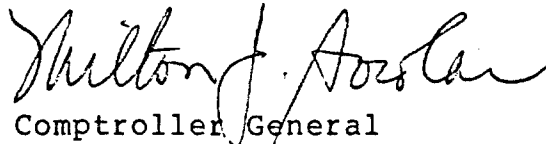
Otis concludes, therefore, that under these circumstances the regulations do not allow a total small business set-aside, and the contracting officer's decision to make one constitutes an abuse of discretion. Based on this, Otis requests that the requirement be resolicited without restriction.

We have recognized that the decision to set aside a particular procurement exclusively for small business is basically a business judgment which involves the exercise of broad discretion by the contracting officer. In addition, we have held that the determination whether a reasonable expectation exists for adequate competition from small business firms is a matter within the sound administrative discretion of the contracting officer and that our Office will not substitute its judgment for that of the contracting officer absent a clear showing that the contracting officer has abused his discretion. See Otis Elevator Company, B-194147, May 10, 1979, 79-1 CPD 331.

Otis' argument that no reasonable expectation for adequate competition existed in this case is essentially speculative. Even assuming that past maintenance service has been inadequate, this is not a basis to conclude that no responsible small business firms exist that can perform the work required under this solicitation. Under our Bid Protest Procedures, the protester has the burden of substantiating its case, and our Office will not conduct an investigation, or request the contracting agency to conduct one, in order to establish the validity of speculative allegations. See, e.g., Espey Manufacturing and Electronics Corporation--Reconsideration, B-194435, August 23, 1979, 79-2 CPD 148. Therefore, we believe that Otis has failed to show that the contracting officer abused her discretion in this matter. Consequently, this ground of its protest is denied.

Finally, in regard to Otis' protest concerning the small business size standard used in this procurement, we note that under 15 U.S.C. § 637(b) (1976), the Small Business Administration is empowered to conclusively determine matters of small business size status for Federal procurement and sales purposes. See Versatile Services, Inc., B-195894, September 24, 1979, 79-2 CPD 219. Therefore, we will not consider this matter further.

Based on the foregoing, the protest is dismissed in part and denied in part.



For the Comptroller General
of the United States