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DECISION

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

FILE: B-216505 **DATE:** February 11, 1985

MATTER OF: Mantech International Corporation

DIGEST:

1. Where the contracting officer has a reasonable expectation that offers will be obtained from at least two responsible small business concerns and that awards will be made at reasonable prices, GAO will not object to the decision to set aside a procurement for small business.

2. A small business may subcontract with a large business for a portion of a contract that has been set aside without endangering its status as small; however, it may not transfer that status to a joint venture composed of itself and a large business for the purpose of competing for set-asides.

3. The GAO will not review questions of small business size status, since the Small Business Administration has exclusive jurisdiction in this matter.

Mantech International Corporation protests the issuance of request for proposals (RFP) No. N00019-84-R-0030 by the Department of the Navy, Naval Air Systems Command (NAVAIR), as a 100 percent small business set-aside. The solicitation covers support services in the areas of program planning and analysis, maintenance technology analysis, and maintenance engineering and logistics support for common avionics,1/ engines, and

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1/ Avionics is the development and production of electrical and electronic devices for use in aviation, especially electronic control systems for aircraft and airborne weapons. Webster's Third New International Dictionary at 151 (1966).

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aircraft systems. The solicitation is divided into seven lots, permitting the award of seven separate contracts if necessary, and contemplates the award of indefinite delivery/indefinite quantity, time and materials contracts for 1 year with 2 option years.

We dismiss the protest in part and deny the remainder.

Mantech alleges that the set-aside is unlawful because the contracting officer did not have a reasonable expectation of adequate business competition or of award at a reasonable price. Mantech also asserts that award to a small business concern would result in an unlawful joint venture and that the set-aside has created an "unfair competitive environment."

Mantech's first contention applies to two of the seven lots. Mantech argues that the Navy received only one proposal for Lot VI from a small business that employs Mantech as subcontractor and only two "technically acceptable" proposals for Lot VII, both from small businesses that employ Mantech or another large business as subcontractor. (The record indicates that Mantech previously performed the services covered by these lots under contracts awarded noncompetitively at a time when it too was a small business.)

For a total small business set-aside, the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.502-2 (1984), requires that there be a reasonable expectation that offers will be obtained from at least two responsible small business concerns and that awards will be made at reasonable prices. The decision to set aside a procurement is basically a business judgment within the broad discretion of the contracting officer, for which we will not substitute our judgment. We therefore will sustain a decision to set aside, even in a case where only one bid from a small business is received, absent a clear showing of abuse of discretion. Burrelle's Press Clipping Service, B-199945, Mar. 2, 1981, 81-1 CPD ¶ 152; U. S. Divers Co., B-192867, Feb. 26, 1979, 79-1 CPD ¶ 132.

We have also held that the government may pay a premium price to small business firms on restricted procurements in order to implement the purpose of the Small Business Act, 15 U.S.C. § 631 (1982), which is "to insure [that] a fair proportion of the total purchases . . . for the government be placed with small business enterprises;" however, an excessive and unreasonable price may not be paid. North American Signal Company, B-190972, May 19, 1978, 78-1 CPD ¶ 387. The issue of whether a small business concern's price is excessive and unreasonable is for the contracting officer to decide, and we will not disturb it where it is supported by a rational basis. Ling/L.A.B., subsidiary of Mechanical Technology, Inc., B-207414, Oct. 15, 1982, 82-2 CPD ¶ 341.

We believe the contracting officer here reasonably determined that bids from a sufficient number of responsible small business concerns would be received. The record indicates that NAVAIR based its decision on the recommendation of its Small Business Office, the concurrence of technical personnel, and prior procurement history, which indicated that five of the seven lots had previously been satisfactorily performed by small businesses at reasonable prices. Further, after synopsis in the Commerce Business Daily, the Navy received expressions of interest from more than 70 small businesses. We therefore will not dispute the contracting officer's determination that sufficient competition and reasonable prices were attainable--a determination that is supported by the fact that, with the exception of Lot VI, NAVAIR received or more proposals for each lot.

Mantech's allegation that award to a small business will result in an unlawful joint venture is based on its belief that the successful small business, lacking the requisite expertise to perform, will necessarily subcontract a substantial portion of the work to a large business concern. A small business may subcontract with a large business for a portion of a contract that is set aside without endangering its eligibility as a small business. However, it cannot transfer or impute its small business status to a joint venture composed of itself and

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a large business for the purpose of competing for set-asides. Loyola College and NonPublic Educational Services, Inc., a Joint Venture et al., B-205994.2, et al., May 16, 1983, 83-1 CPD ¶ 507. The allegation that a subcontract will result in a joint venture, however, is essentially a challenge to the size status of the successful small business offeror. Since under 15 U.S.C. § 637(b)(6) the Small Business Administration has exclusive authority to determine matters of small business size status, we will not review this allegation. See Putnam Mills Corp., B-207973, July 6, 1982, 82-2 CPD ¶ 25.

Finally, the alleged "unfair competitive environment" created by the set-aside refers to the fact that Mantech, and allegedly other large businesses, have entered into teaming or subcontract arrangements with various small businesses, and that therefore in some instances Mantech, as a subcontractor, may be competing against itself. This, however, is a result of Mantech's business decision to enter subcontracting arrangments with different small businesses bidding on different lots within the same contract, rather than the result of any improper government action. Since such a decision is entirely within Mantech's control, the situation is of its own making.

We dismiss the protest with regard to the joint venture allegation and deny the remainder.

for Seymour Efros
Comptroller General
of the United States