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DECISION



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

FILE: B-222792 **DATE:** June 11, 1986
MATTER OF: International Technology Corporation

DIGEST:

Contracting officer's decision not to procure required services through a small business set-aside was not an abuse of the discretion granted under the procurement regulations where he determined, based on negative technical evaluations of small businesses' qualification statements, that there was no reasonable expectation that offers from two responsible small business concerns would be received.

International Technology Corporation (INTEC) protests the decision of the Eastern Space and Missile Center, Patrick Air Force Base, Florida (Air Force), not to set aside for small business a procurement for depot-level services for the tethered aerostat radar system under request for proposals (RFP) No. F08606-86-R-0007. We deny the protest.

To determine if there was sufficient interest and capability within the small business community to reserve this procurement for small business, the Air Force sent the statement of work to several small business firms, asking them to submit qualification statements for evaluation if interested. The Air Force program office technically evaluated the four responses received and concluded that the small business firms did not appear capable of performing the required services. Based on these findings, the contracting officer decided to issue the RFP on an unrestricted basis.

INTEC and Arcata Associates, Inc. (Arcata), protested the Air Force's decision not to set aside the procurement. Both disagreed with the Air Force technical evaluations which showed they had not demonstrated the necessary capabilities to perform depot-level services as outlined in the statement of work. We previously dismissed Arcata's protest because Arcata failed to respond to the Air Force's report within the time required under 4 C.F.R. § 21.3(e) (1986).

We deny INTEC's protest for the reason stated below.

As a general rule, the decision whether to set aside a particular procurement is within the discretion of the contracting officer. Winfield C. Towles M.D. & Associates, B-219180, July 5, 1985, 85-2 C.P.D. ¶ 28. With one exception not relevant here, nothing in the Small Business Act, 15 U.S.C. § 631, et seq. (1982), makes it mandatory that any particular procurement be set aside for small business.

The procurement regulations contain an additional relevant exception to the general rule that a particular procurement need not be set aside for small business. Under the so-called rule of two, the contracting officer is required to set aside a procurement if he determines that there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns and award will be made at a reasonable price. See 48 C.F.R. § 19.502.2 (1984). Here, the record shows that the contracting officer, relying on the program office's negative technical evaluation of the qualification statements submitted by the small business firms, determined that there was no reasonable expectation that offers from at least two responsible small business concerns would be received and that award would be made at a reasonable price. We cannot find that the business judgment not to set aside was an abuse of the contracting officer's discretion, and we will not substitute our judgment absent a clear showing of abuse of discretion. See A&M School Bus Service, B-208833, Dec. 22, 1982, 82-2 C.P.D. ¶ 566.

for Seymour E. Gross
Harry R. Van Cleve
General Counsel