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DECISION

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

FILE: B-222201 **DATE:** July 2, 1986

MATTER OF: Renaissance Enterprises, Inc.

DIGEST:

1. Small Business Administration determination that the awardee of a contract, set aside for small businesses, was a large business does not affect the validity of the contract award where the contracting agency properly determines not to issue preaward notices to apprise offerors of the intended awardee due to urgency of procurement and awards the contract before the protester can file a size protest.

2. Under a solicitation for double bedroom accommodations with a minimum "sleeping area" of 90 square feet per person, the contracting agency reasonably determines that the awardee's offered condominiums, with a total floor space (including bedrooms) well exceeding 90 square feet per person, is acceptable where it is clear that the square footage requirement is based on single-room accommodations, and multiple-room accommodations are permitted.

3. Even if protester offering motel-type accommodations interpreted solicitation's requirement for a sleeping area of 90 square feet per person to require bedrooms with 90 square feet, acceptance of a competitor's offer of more spacious multiple-room condominiums having bedrooms with less than 90 square feet per person does not prejudice protester where the condominiums exceed the agency's basic requirements and the protester does not allege that it could have offered comparable accommodations at a lower price.

4. Allegation that the awardee will not be able to provide accommodations for transient personnel in accordance with solicitation requirements involves the contracting agency's determination of the awardee's responsibility which will not be reviewed absent a showing of possible fraud or bad faith by procurement officials or the failure to apply definitive responsibility criteria.

5. Preaward survey is not a legal prerequisite to an affirmative determination of responsibility.

Renaissance Enterprises, Inc. (Renaissance) protests the award of a fixed-price, indefinite-delivery requirements contract to Ocean Resorts, Inc. (ORI) under request for proposals (RFP) No. F38606-86-R-0008, issued as a total small business set-aside by the Department of the Air Force, Myrtle Beach Air Force Base, South Carolina, for transient quarters from March 2 to April 16, 1986. The Air Force needed the quarters because runway closure at Seymour Johnson Air Force Base, North Carolina, resulted in increased personnel deployment to Myrtle Beach Air Force Base. Renaissance contends that ORI is not a small business, that ORI's offer took exception to the RFP, and that ORI is incapable of providing the number of quarters required by the RFP. The protester asks that the contract be terminated and that any damages and costs, including attorney's fees, be awarded to Renaissance.

The protest is dismissed in part and denied in part.

The RFP, issued on February 10, 1986, requested proposals by February 20, 1986, due to the urgency of the requirement for accommodations. The RFP stated an estimated requirement for 281 double bedroom accommodations (doubles) and 155 single bedroom accommodations (singles). The RFP required doubles with a minimum "sleeping area" of 90 square feet per person for lower ranking enlisted personnel. Singles having a minimum sleeping area of 150 square feet were required for higher ranking enlisted personnel, and singles with a minimum sleeping area of 250 square feet were required for all officers, warrant officers and civilians.

The RFP solicited daily prices for each type of accommodation, and provided that an award would be made to

a single responsible offeror based on the lowest aggregate price, computed by multiplying the unit prices for each type of quarters by the estimated requirement for that type of quarters and totaling the results.

The protester and ORI submitted the only acceptable proposals. ORI's proposal offered daily rates of $40 per double and $20.00 per single (totaling $675,648) while the protester's proposal offered rates of $56.00 per double and $30.50 per single (totaling $945,530). The Air Force awarded ORI the contract on February 24, 1986, and determined to proceed with performance based upon a determination that the quarters were urgently needed.

Regarding the contention that ORI is not a small business, ORI certified in its offer that it was a small business, and the contracting officer had to accept the certification unless he had reason to question it. Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302(b) (1984). The record does not indicate that the contracting officer, before making the award, had any information inconsistent with ORI's certification. Based on the urgency of the procurement, the Air Force proceeded to award the contract without issuing preaward notices of the intended awardee. When notified of the award to ORI, the protester timely filed a protest of ORI's size status with the contracting officer. The matter then was referred to the Small Business Administration (SBA) for its consideration, and SBA decided that ORI was not a small business.

Applicable regulations expressly permit the contracting officer not to issue preaward notices of the intended awardee where it is determined that urgency necessitates award without delay. FAR, § 15.1001(b)(2) (FAC 84-13, Feb. 3, 1986). Since the Air Force awarded the contract before the size protest based on such an urgency determination, the award was proper. Triple A Shipyards, B-213738, July 2, 1984, 84-2 CPD ¶ 4.

Upon determining that ORI was a large business, the SBA recommended that the Air Force should terminate the contract for convenience. The Air Force, however, decided not to terminate the contract. In this regard, we note that at the time of SBA's determination, Mar. 20, 1986, approximately 700 personnel already had been lodged in the awardee's accommodations. Under these circumstances, where the personnel apparently could not have been relocated without expenses and disruptions that were unwarranted for

the few weeks remaining in their temporary deployment to Myrtle Beach Air Force Base, we cannot question the Air Force's action in not terminating ORI's contract. See Solon Automated Servs., Inc., B-198670, Nov 18, 1980, 80-2 CPD ¶ 365.

Regarding the acceptability of ORI's offer, ORI offered condominiums that included living space other than bedrooms with a total floor space that well exceeded 90 square feet per person, although the bedrooms alone did not have 90 square feet per person under double occupancy. The protester argues that the RFP's requirement for 90 square feet of "sleeping area" per person meant that the bedrooms themselves alone had to have 90 square feet per person, and, therefore, ORI's offer was unacceptable. The Air Force contends that ORI's accommodations more than met the Air Force's needs which were based on the requirement for 90 square feet of "net living area," stated in Air Force Regulation 90-9 (Oct. 21, 1984).

It is clear that the minimum requirements of the RFP were for motel-type bedroom accommodations meeting the stated size requirements and having simple furnishings (i.e., beds, dresser or chest of drawers, desk chair and lounge chair) in addition to a bathroom and closet space. Because the RFP required clock radio and televisions for "each sleeping room or shared TV/living room area," it is similarly clear that offers of condominiums with shared living rooms also were acceptable. While the requirement of 90 square feet of sleeping area per person obviously would be applicable to the basic motel-type accommodations, we think it is not reasonable to read the requirement as applying to a bedroom when the bedroom, rather than being the entire accommodation offered, is just one room in a condominium with other living-area space.

Even if the protester believed that the requirement applied regardless of the type of accommodations offered, we note that the awardee's condominiums appear to be much more spacious than the protester's,[1]/ and the protester does not contend that it could have provided similar quarters at a lower price. Thus, we fail to see how the

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1/ An Air Force memorandum, dated March 27, indicates that ORI's smallest condominium was a two-bedroom facility that had no more than four people assigned to it and contained approximately 1,200 square feet of total living area, whereas the protester offered motel-type units, typically having a total living area of approximately 290 square feet.

protester was prejudiced by the Air Force's acceptance of accommodations that basically exceeded the RFP's minimum requirements. See Charles V. Clark Co., 59 Comp. Gen. 296 (1980), 80-1 CPD ¶ 194.

The protester alleges that ORI does not have sufficient accommodations to meet the RFP's terms and that the agency failed to conduct an adequate preaward survey of ORI. In effect, this allegation challenges the Air Force's determination of ORI's responsibility. Our Office does not not review affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials or the failure to apply definitive responsibility in the solicitation. 4 C.F.R. § 21.3(f)(5); Interstate Equip. Sales, B-222213, Mar. 19, 1986, 86-1 CPD ¶ 274. The protester has made no showing that either exception applies here. In any event, we have held that a preaward survey is not a legal prerequisite to an affirmative determination of responsibility. See Xtek, Inc., B-213166, Mar. 5, 1984, 84-1 CPD ¶ 264.

The protest is dismissed in part and denied in part.

for Seymour Efros
Harry R. Van Cleve
General Counsel