



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pacific Information Management, Inc.

File: B-224506

Date: August 14, 1986

DIGEST

Where the Small Business Administration (SBA) determined that an offeror is not small based on its affiliation as a joint venturer with large business subcontractors, the contracting agency properly rejected the offeror's proposal without giving the offeror an opportunity to cure the deficiency, since a concern cannot become eligible for a particular procurement by taking steps to meet the size standard after SBA has determined the concern is not small for the purposes of that procurement.

DECISION

Pacific Information Management, Inc. (Pacific) protests the rejection of its proposal under request for proposals (RFP) No. RS-ORN-86-264, issued by the Nuclear Regulatory Commission (NRC) for the development and implementation of computer methodologies. The RFP restricted competition to small business concerns, and the NRC rejected Pacific's proposal because the Small Business Administration (SBA) determined that Pacific was not a small business for the purpose of this procurement. Based on the extent to which Pacific proposed to utilize large business subcontractors, the contracting officer had referred Pacific's initial proposal to the SBA for a determination of its size status. The SBA ruled that, for size status purposes, Pacific's proposal was submitted by a joint venture with the large business subcontractors, and that the joint venture exceeded the applicable size standard.^{1/}


^{1/} SBA regulations specifically provide that a joint venture may be implied from the circumstances of a particular contract effort, and that an ostensible subcontractor can have a controlling role to such an extent as to be considered a joint venturer affiliated with the prime contractor. 13 C.F.R. § 121.3(a)(vii)(A) and (c) (1986).

The protester argues that it should be given an opportunity to submit a revised proposal.

Initially, we point out that the SBA's determination of Pacific's size status is conclusive, 15 U.S.C. § 637(b)(6) (1982), and therefore will not be reviewed by this Office. Bender Shipbuilding and Repair Co., Inc., B-219629.2, Oct. 25, 1985, 85-2 CPD ¶ 462. Further, the size status of a concern, including its affiliates, is determined as of the date of its written self certification of size status submitted as part of the concern's offer. 13 C.F.R. § 125.5(a). A concern cannot become eligible for a particular procurement by taking action to meet the standard for a small business after the SBA has determined that the concern is not a small business for the purposes of that procurement. 13 C.F.R. § 129.9(d); Federal Acquisition Regulation, 48 C.F.R. § 19.301(c) (1985).

Since a concern cannot take action to meet the standard for a small business after the SBA has determined that the concern is not small, Pacific cannot cure the deficiency in its proposal that caused the SBA to issue its adverse size determination. NRC therefore properly rejected Pacific's proposal.

The protest is dismissed. See 4 C.F.R. § 21.3(f) (1986).


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