

C. Henry 2-5-7



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: APAC-Tennessee, Inc.  
File: B-226365; B-227049  
Date: April 27, 1987

## DIGEST

Protester fails to show that contracting officer's decision to set aside procurements for small businesses was unreasonable where (1) contracting officer decided, based on survey of potential small business bidders, that a sufficient number of responsible small businesses could be expected to compete and only evidence protester offers to refute contracting officer's determination is unsupported statement that small business bidders lack capacity to perform the required work; and (2) even assuming, as protester argues, that lower prices could be expected in an unrestricted procurement, protester offers no evidence to show that the small business bidders' prices in prior set-aside procurements have been unreasonably high.

## DECISION

APAC-Tennessee, Inc. challenges the decision by the Corps of Engineers to restrict competition to small businesses under invitation for bids (IFB) Nos. DACW-87-B-0015 and DACW66-87-B-0024 for casting of articulated concrete mattresses. APAC contends that the small business set-asides are improper because the Corps cannot reasonably expect to receive reasonably priced bids from at least two responsible small business firms. We deny the protest regarding IFB No. 0015 and dismiss the protest regarding IFB No. 0024.

Both IFBs are total small business set-asides calling for casting of concrete mattresses used for river bank stabilization.<sup>1/</sup> Under IFB No. 0015, casting is to take

<sup>1/</sup>The Corps originally decided not to set aside IFB No. 0015. After its decision was challenged by a potential small business bidder and the Small Business Administration recommended that the procurement be set aside, the Corps reversed its decision and amended the IFB to provide for a total small business set-aside.

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place at the Helena Casting Field, Helena, Arkansas; IFB No. 0024 calls for casting at Richardson Landing, Tennessee. As APAC recognizes, previous procurements by the Corps for casting concrete mattresses have been set aside for small businesses, with the exception of one procurement in 1986 for casting at Greenville, Mississippi, which was conducted on an unrestricted basis.

Once a Corps contracting office has successfully acquired a product on the basis of a small business set-aside, that office's subsequent requirements for the product must be acquired on the basis of a repetitive set-aside, unless the contracting officer determines that there is not a reasonable expectation that reasonably priced offers will be received from at least two responsible small businesses. Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.501(g) (1986); Department of Defense FAR Supplement, 48 C.F.R. § 219.501(g) (1985). In this case, APAC first contends that the set-aside determination was improper because the three potential small business bidders lack the capacity to perform the work called for by the Corps since they all have other current casting contracts and are capable of performing only one contract at a time. The Corps disagrees, stating that, as a result of the challenge to its original decision not to set aside IFB No. 0015, the contracting officer conducted a survey of the small business concerns that had expressed interest in participating in the procurement, and concluded that a sufficient number of responsible small businesses could be expected to compete.

When making a set-aside determination, the contracting officer need only make an informed business judgment regarding the potential for participation by responsible small businesses. Anchor Continental, Inc., 65 Comp. Gen. 270 (1986), 86-1 CPD ¶ 137. Here, the contracting officer states that he surveyed the potential small business bidders and concluded that a sufficient number of responsible small businesses could be expected to compete. In our view, APAC's challenge to the small business bidders' responsibility, based solely on its unsupported statements regarding their performance capacity, is insufficient to show that the contracting officer's determination, based on the recent survey of the firms, was unreasonable.

APAC also argues that the contracting officer could not expect to receive reasonable prices from the small business bidders in light of the bidding results from the 1986 procurement for casting of concrete mattresses at Greenville, Mississippi, which was conducted on an unrestricted

basis.<sup>2/</sup> Under the Greenville IFB, four bids were received, three from small businesses and one from APAC, the only large business which participated; the low bidder was one of the three small businesses. According to APAC, the low bid in the Greenville procurement (\$28.14 per mattress) was lower than the average low bid (\$30.30 per mattress) in the four other procurements set aside for small business in 1986, thereby demonstrating, in APAC's view, that lower bid prices could be expected if the current IFBs were conducted on an unrestricted basis rather than as set-asides.

Generally, in order to implement the purposes of the Small Business Act, a contracting agency may make award on a set-aside at a premium price, provided that the price is reasonable. Fairfax Hospital Association, B-211874, Sept. 2, 1983, 83-2 CPD ¶ 302. Here, the fact that the low bid in the unrestricted Greenville procurement was below the average low bid in the four other set-aside procurements does not demonstrate that those bids were unreasonably high.<sup>3/</sup> APAC offers no other evidence showing that the bid prices were unreasonable; in fact, APAC did not reveal its own bid price in the Greenville procurement, even though comparison with a large business bid is a common method of determining the reasonableness of a small business bid. See Asbestos Abatement of America, Inc., B-221891, et al., May 7, 1986, 86-1 CPD ¶ 441. As a result, we see no basis to challenge the contracting officer's determination that reasonably priced bids from the small business bidders could be expected under both IFBs.

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<sup>2/</sup>The protest regarding IFB No. 0024, filed subsequent to the protest regarding IFB No. 0015, is based solely on this ground. In view of our conclusion, discussed above, that the bidding results from the Greenville procurement do not support APAC's contention that there was not a reasonable expectation of reasonably-priced bids, we dismiss the protest regarding IFB No. 0024 without requiring the submission of a report by the Corps. Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1986).

<sup>3/</sup>APAC provided only the average of the four low bid prices, not the actual bid prices themselves.

APAC has requested that a conference be held on the merits of the protests. No useful purpose would be served by holding such a conference, however, where, as here, it is clear that the protest is without merit. See Libby Corp., B-218367.2, Apr. 10, 1985, 85-1 CPD ¶ 412.

The protest regarding IFB No. 0015 is denied; the protest regarding IFB No. 0024 is dismissed.

*for* *Seymour Efros*  
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General Counsel