



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Economy House Motel  
File: B-226977  
Date: June 11, 1987

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### DIGEST

Contracting officer did not abuse her discretion in not setting aside a particular procurement for small business concerns where, at the time the determination was made, she had no reasonable expectation that offers from two responsible small business concerns would be received.

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### DECISION

Economy House Motel, a small business, protests the Army's decision not to set aside for exclusive small business participation invitation for bids (IFB) No. DABT59-87-B-0028, for meals and lodging for applicants at the military entrance processing station in Richmond, Virginia. We deny the protest.

The Army states that the decision was made not to set aside this procurement because it had no reasonable expectation of receiving bids from at least two responsible small business concerns at reasonable prices. The Army explains that in the past it has "made an all out effort" to obtain small business competition for these services; the agency reviewed bidders mailing lists for small business sources and advertised set-asides in the Commerce Business Daily (CBD) for 30 days. However, only one small business, Economy House, had expressed an interest in competing.

The Army reports that while the previous procurement for these services was set aside, the set-aside was canceled and the services were resolicited on an unrestricted basis, because no bids were received from responsible small business concerns. Although Economy House bid under the set-aside (the only small business bid received), the firm was determined nonresponsible and the Small Business Administration (SBA) declined to issue Economy House a Certificate of Competency (COC).

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Economy House argues that the contracting officer abused her discretion in refusing to set aside this procurement. Economy House states that since being denied a COC, it has corrected deficiencies and is "ready, willing and able to perform" the requirement. The firm believes that the contracting officer improperly relied entirely on the past procurement history for these services in determining not to set aside this procurement. In this regard, in supplemental comments submitted by Economy House, the firm states that at the May 18, 1987, bid opening for this procurement, three small business concerns submitted bids.

Economy House notes that in the past the firm has successfully performed this requirement under a small business set-aside. In this regard, Economy House argues that in accordance with the provisions of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.501(g) (1986), the Army is required to set aside the current procurement. FAR, 48 C.F.R. § 19.501(g), provides that "once a product or service has been acquired successfully by the contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service . . . shall, if required by agency regulations<sup>1/</sup>, be acquired on the basis of a repetitive set-aside." The provision further provides that "this procedure will be followed unless the contracting officer determines that there is not a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns . . . and (2) award will be made at reasonable prices." FAR, 48 C.F.R. § 19.501(g).

We find the provisions of FAR, 48 C.F.R. § 19.501(g), requiring repetitive set-asides inapplicable here, where the record shows that most recently the services have not been successfully acquired under a set-aside. Although in the past the Army set aside this requirement, the previous set-aside for meals and lodging resulted in no competition from responsible small business concerns and was therefore canceled. Also, the above procedure concerning repetitive set-asides is to be followed unless the contracting officer determines, as she did here, that there is not a reasonable expectation that bids will be obtained from at least two responsible small business concerns and that award will be made at reasonable prices. FAR, 48 C.F.R. § 19.501(g). The judgment as to whether there is a reasonable expectation

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<sup>1/</sup> Department of Defense (DOD) Regulations so require. See DOD FAR Supplement, 48 C.F.R. § 219.501(g) (1985); see also Swan Industries, B-217210, Mar. 25, 1985, 85-1 C.P.D. ¶ 346.

that bids will be received from a sufficient number of small businesses to warrant a set-aside basically involves a business decision within the broad discretion of contracting officials and our review generally is limited to ascertaining whether those officials have abused that discretion. See Swan Industries, B-217210, supra.

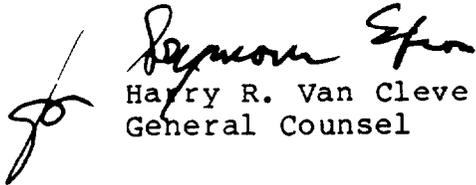
We have no basis to question the contracting officer's determination not to set aside this procurement. The record shows that the Army has made a continual effort to obtain small business competition for this requirement; however, only one small business, Economy House, expressed an interest in competing. While the protester argues that the fact that three small businesses (the protester and two other small businesses) actually bid under this procurement establishes that the contracting officer abused her discretion in not setting aside the current requirement, the determination to set aside a procurement is prospective, not retrospective. See Advanced Construction, Inc., B-218554, May 22, 1985, 85-1 C.P.D. ¶ 587. In this regard, the Army has advised us that the two small business concerns (other than Economy House) which bid were not in existence at the time of solicitation issuance.

Therefore, on this record, we find that at the time the determination not to set aside was made, the contracting officer had no reasonable expectation that bids would be received from a sufficient number of responsible small business concerns. The protester does not allege or provide any evidence that small business concerns other than itself were interested in competing and the fact that new firms ultimately bid does not establish that the Army could reasonably have expected bids from those firms. See, e.g., J.M. Cashman, Inc., B-220560, Nov. 13, 1985, 85-2 C.P.D. ¶ 554.

Concerning Economy House's contention that the Army improperly relied on past procurement history in deciding not to set aside the current requirement, prior related history is an appropriate and important consideration in determining whether a set-aside is warranted. See T-L-C Systems, B-225496, Mar. 27, 1987, 87-1 C.P.D. ¶ 354; J.M. Cashman, Inc., B-220560, supra. The past procurement history for these services indicates that the Army had been unable to successfully acquire meals and lodging in the Richmond area under small business set-asides. As noted above, the set-aside for these services had to be canceled when no bids from responsible small business concerns were received. Further, the record shows that the agency made reasonable, but unsuccessful attempts to encourage small business participation through CBD notices and by reviewing bidders mailing lists for small business sources. Also, its

decision to issue this solicitation on an unrestricted basis was approved by the Army small business specialist. Based on this record, including the prior procurement history, we cannot conclude that the contracting officer's decision in this case was unreasonable.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel