



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Salmon and Associates, P.A.

File: B-227079

Date: August 12, 1987

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### DECISION

Protest that solicitation for construction should be set aside for small business is denied where the record does not show that the contracting agency abused its discretion in determining that there was no reasonable expectation of receiving acceptable proposals from at least two responsible small business concerns.

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### DECISION

Salmon and Associates, P.A. protests request for proposals (RFP) No. DACA21-87-R-0135, issued by the Savannah District, U.S. Army Corps of Engineers. Salmon insists that the RFP should be set aside for small business concerns only. Additionally, Salmon argues that the RFP improperly gives "inordinate amount of weight to so-called technical factors versus the weight given pricing." Finally, Salmon argues that the RFP improperly consolidates into one contract work which should be the subject of several contracts to the detriment of small business.

We deny the protest.

The RFP sought proposals for a firm-fixed-price, indefinite quantity contract for maintenance and repair work and for minor construction projects at Fort Bragg, North Carolina. Offerors were requested to submit technical and price proposals covering all work contained in the detailed specifications, which listed approximately 25,000 individual construction tasks and items.

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Evaluation criteria for this RFP were stated to be, in descending order of importance, as follows:

- (1) management ability;
- (2) offeror's subcontracting support capability;
- (3) offeror's price compared to government estimate;
- (4) offeror's experience;
- (5) offeror's technical staff capability.

Six proposals were received, including two proposals from small business concerns. Because of Salmon's protest, no award has been made.

A procurement is required to be set aside for small business when there is a reasonable expectation of receiving proposals from at least two responsible small business concerns, and the award can be made at a reasonable price. Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.502-2 (1986). That determination 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. J.M. Cashman, Inc., B-220560, Nov. 13, 1985, 85-2 C.P.D. ¶ 554.

The Army notes that in response to the prior solicitation only one acceptable offer was received from a small business, although five other unacceptable offers from small businesses were also received. The Army states that the decision to issue the RFP on an unrestricted basis was also based on the contracting officer's decision that the contract would require any prospective contractor to have substantial capital after award for effective performance of the contract. The capital required would be so substantial, in the Army's view, that it would not be reasonable to expect proposals from at least two responsible small business concerns. Moreover, the Army states, the contract involves a "high management requirement" and the volume of work could involve 100 to 200 work orders to be accomplished concurrently in "carpentry, road repair, roofing, excavation, interior electrical, steam fitting, plumbing, sheetmetal, painting, demolition, concrete masonry, and welding." According to the Army, the complexity and diversity of these trades and the requirement for management among them requires an "expertise not normally found in small business." Finally, the Army notes that under the prior experimental contract, 97 percent of the work had been subcontracted to small businesses--thus indicating that

"even under an unrestricted RFP, the policy of employing small business concerns would be met under this proposed contract."

Salmon argues that the Army's determination that there was not a reasonable expectation that offers would be received from at least two responsible small business concerns is erroneous because five small businesses submitted "responsive" proposals under the prior similar RFP. Nevertheless, Salmon admits that only one small business proposal was found to be in the competitive range under the prior RFP.

Based on our review of the record, we do not find that the Army abused its discretion. Although Salmon argues that the presence of more than two small business offers under the prior RFP should have dictated a set-aside under this RFP, this argument neglects the Army's unchallenged finding that only one of these small business offers was found to be acceptable. Indeed, Salmon admits that "it is not realistic to believe small businesses can seriously offer a technical proposal that would in any way favorably compare with the proposals of large businesses" and that it "should therefore be no surprise to anyone that only one small business was in the competitive range on the previous procurement." In this regard, we have approved a decision not to issue a small business set-aside where "only one acceptable offer" had been received from a small business under an earlier RFP. See T-L-C Systems, B-225496, Mar. 27, 1987, 87-1 C.P.D. ¶ 354. Furthermore, the Army points out that the Savannah District Small Business Office concurred in the Army's decision to issue the RFP on an unrestricted basis, and the Small Business Administration did not contest this determination, despite Salmon's protest. Thus, the record provides no basis for us to conclude that the Army acted improperly here in not setting this procurement aside for small businesses.

Salmon next argues that the Army gave improper weight to "so-called" technical standards. Specifically, Salmon alleges that the Army told it that on the prior RFP (and, presumably, according to Salmon, on the present RFP) price was worth only 4 percent of the evaluation weight and technical factors were worth 96 percent. Thus, the record provides no basis for us to conclude that the Army acted improperly here in not setting this procurement aside for small businesses.

We have previously considered the Army's proposed evaluation of these "job order" construction contracts and found that the solicitation may properly emphasize technical or management factors over price factors in the evaluation.

See generally B-222337, July 22, 1986 (letter to Chairman, House Committee on Small Business), where we discussed the program and found it compliant with the procurement laws.

Moreover, the record shows that, contrary to Salmon's contention, price was accorded 25 percent of the evaluation weight in the prior solicitation; this is not a de minimis weight as contended by Salmon. Moreover, our review of the RFP and evaluation plan in question here reveals that the weight accorded price factors is also not de minimis.<sup>1/</sup>

Finally, Salmon argues that the Army has improperly consolidated its requirements into this one contract, so as to especially prejudice small businesses. As stated in our 1986 letter, B-222337, supra, the Army has a need to try to reduce the cost and time in contracting for repair, maintenance and small construction work for installations and has found the "job order" contract with a single management contractor may be an effective way to achieve these goals. We found that the Army has reasonably justified the program.

We deny the protest.

*for*   
Harry R. Van Cleave  
General Counsel

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<sup>1/</sup> The Army requests that the precise weight accorded price under this RFP not be disclosed since the evaluation is ongoing. See 48 C.F.R. § 15.605(e).