



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Aegis Services, Ltd.

File: B-227854, B-227855, B-227856, B-227857,
B-227858 and B-227859

Date: September 15, 1987

DIGEST

Protest that procurements for security services should be set aside for small businesses because prior procurements were set aside is denied where new procurements contain more stringent requirements. Fact that current contract being performed by protester has been modified during performance to include many of the new duties does not alter this result because services now being procured are different than those solicited under original set-aside solicitation.

DECISION

Aegis Services, Ltd. (Aegis), protests the decision not to set aside for small business six procurements, request for proposals (RFP) Nos. 87-5031, 87-5032, 87-5033, 87-5034, 87-5035 and 87-5038, issued by the United States Marshals Service for court security services in several federal judicial districts.

The protest is denied.

Aegis contends that since each of the previous procurements for the same services and locations was set aside for small business and had offers from at least two small business concerns, the Marshals Service should set aside these procurements.

The Marshals Service contends that participation of small businesses in five of the prior procurements was generally low and that there was in fact no prior procurement for RFP 87-5038. The Marshals Service states that, in any event, the present solicitations are substantially different from the prior procurements in that they include greater performance standards and requirements on the contractors and the court security officers (CSO), which the contractors provide.

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Specifically, the Marshals Service contends that the CSOs under the new contracts have been given a variety of new duties with respect to Grand and Petit Juries and courtroom proceedings. These include escorting juries or jurors within the court facility or otherwise upon notification by the presiding judge; calling jurors and witnesses; assisting with evidence custody; opening and closing court; administering oaths to witnesses or jurors; securing unattended courtrooms; inspecting courtrooms prior to proceedings; testing security devices and reporting their status to the U.S. Marshal's office; preserving order in the courtrooms; and assisting the presiding judge or the clerk of the court with official messages or other tangibles related to Federal judicial proceedings. In addition, CSOs are issued and must carry special deputation papers.

The Marshals Service also states that it has changed the invoicing and payment procedures for contractors. Simple, fixed-monthly payments for services rendered will no longer be made since the contractor must now submit invoices broken out in accordance with detailed, hourly billing rates.

Aegis argues that it and 10 other small businesses have no problem in complying with the requirements in the present RFPs and in fact many of the requirements in the RFPs were found in the existing court security contracts. However, Aegis does state that CSO duties relating to juries, and courtroom activities and the special deputation papers which were recently (1985) included within present court security contracts, were not performance characteristics included in the earlier initial solicitations. Aegis states, concerning the new billing procedures, that it welcomes the change and considers it simpler than the former method of billing.

As a general rule, the decision whether to set aside a particular procurement is within the discretion of the contracting officer. T-L-C Systems, B-225496, Mar. 27, 1987, 87-1 C.P.D. ¶ 354. The regulations pertaining to small business recognize that a procurement which has been conducted previously as a set-aside may be procured on an unrestricted basis when it is determined that there is no reasonable expectation of receiving bids from at least two responsible small businesses and that award cannot be made at a reasonable price. Federal Acquisition Regulation, 48 C.F.R. §§ 19.501(g) and 19.506 (1986), Abel Converting, Inc., B-224223, Feb. 6, 1987, 87-1 C.P.D. ¶ 130.

We have held that where a contract awarded under a set-aside procurement was subsequently modified so that the services provided were different from that originally procured, a later procurement for the modified services need not be set aside. Le-Gals, Inc., B-212531.2, Oct. 5, 1984, 84-2 C.P.D. ¶ 386.

In this case, the services required of the CSOs in relation to courtroom and jury duties were not required by the earlier set-asides but were added later during contract performance. These new services, moreover, reflect substantial added requirements for the contractors. In addition, the Marshals Service states that under the earlier less demanding set-asides less than two small businesses responded to all portions of each of the RFP's. Given the prior lack of interest and the acknowledged expansion of the type of services the CSOs are required to perform under these RFPs, we do not think it unreasonable that the contracting officer thought he would not receive acceptable offers from two small businesses on each of these solicitations. Ameriko Maintenance Co., Inc. B-216406, Mar. 1, 1985, 85-1 C.P.D. ¶ 255.

We deny the protest.

for Seymour Efo
Harry R. Van Cleve
General Counsel