



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Adrian Supply Co.--Reconsideration

File: B-225630.4

Date: September 18, 1987

DIGEST

Protester has not established that inadequate competition was obtained under small business set-aside where bids were received from two apparently eligible small business concerns and the contracting activity determined that adequate competition and reasonable prices had been obtained.

DECISION

Adrian Supply Company requests reconsideration of our decision, Adrian Supply Co., B-225630.2, May 7, 1987, 87-1 C.P.D. ¶ 489, in which we denied Adrian's protest that its bid under solicitation No. C-1515 was improperly rejected by the Bureau of Indian Affairs (BIA), U.S. Department of the Interior, for failure to submit required descriptive literature. We also dismissed Adrian's protest that the awardees' bids were nonresponsive because they indicated that the bidders were not eligible small business concerns because Adrian was not an interested party.

Adrian previously requested reconsideration, conceding that its bid properly was rejected as nonresponsive and, therefore, that it generally would not be considered an interested party to protest the responsiveness of other bids. However, Adrian contended that there were an insufficient number of responsive small business bids to ensure adequate competition and, therefore, termination and resolicitation was the appropriate remedy, which would make Adrian an interested party. We dismissed this request on the basis that it was untimely because Adrian had been made aware by the agency report of BIA's position that there had been adequate competition, but Adrian failed to raise the issue in its comments. Adrian Supply Co.--Reconsideration, B-225630.3, Aug. 7, 1987, 87-2 C.P.D. ¶ ____.

Adrian now points out that in its response to the agency report it had indicated that adequate competition existed only because the agency improperly considered large business

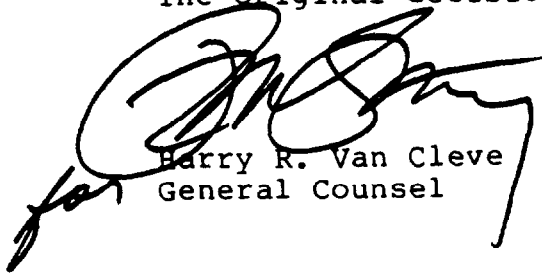
bids under a small business set-aside, in effect arguing that there was inadequate competition. Since this argument reasonably may be construed to have timely raised the issue of whether adequate competition was received under the solicitation, we will consider the issue.

The solicitation in question was a total small business set-aside for multiple line items, under which 15 bids were received. BIA determined that nine of the bids, including Adrian's, were nonresponsive either because the bidders indicated that they were large business concerns, or because of other bid defects. Of the remaining six bidders, Adrian contends that four should have been rejected as nonresponsive because they were either large businesses, or were offering products manufactured by large businesses; three of these four bidders received awards for various combinations of the line items which were solicited. Adrian further speculates that the remaining two bids were also nonresponsive, but has offered no supporting evidence in this regard, nor is there any such indication in the record. Thus, at a minimum, BIA received two responsive small business bids under this small business set-aside, and the contracting officer had determined that BIA had obtained adequate competition and reasonable prices.

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.502-2 (1987), provides that in order to make a total small business set-aside the contracting officer must determine that there is a reasonable expectation that offers will be received from at least two responsible small business concerns and that award will be made at a reasonable price. The applicable regulation expressly contemplates that bids by two responsible small business concerns would constitute adequate competition. Further, we have held that where, as here, two offerors compete, the agency reasonably may conclude that adequate competition exists. Sperry Corp., B-225492, et al, Mar. 25, 1987, 87-1 C.P.D. ¶ 341. In addition, we have held that the fact that only one responsive small business bid is received under a small business set-aside does not establish that there was inadequate competition where the contracting officer determines the price to be reasonable. U.S. Elevator Corp., B-224237, Feb. 4, 1987, 87-1 C.P.D. ¶ 110. Therefore, under the present circumstances, we cannot say that the contracting officer lacked a reasonable basis to determine that there was adequate competition. Since there were two responsive small business bidders who could have protested, Adrian is not an interested party for the purpose of protesting the nonresponsiveness of the awardees.

We note that BIA has recognized that the awards were improper under this small business set-aside because the awardees' bids indicated that the bidders were either large businesses or were offering goods made by large business manufacturers. Because performance had been fully completed under the solicitation, no remedy was available. However, by memo from the BIA, Chief, Division of Contracting and Grants Administration, to all bureau contracting offices, BIA contracting officers were advised to carefully examine bidder representations concerning size and small business eligibility when evaluating bids under small business set-asides. The memo also brought to the contracting officers' attention the fact that a small business set-aside can only be dissolved after bid opening in accordance with the requirements set forth in FAR, 48 C.F.R. subpart 19.5.

The original decision is affirmed



Harry R. Van Cleve
General Counsel