

Sylvia Frank



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: APAC-Tennessee, Inc.

File: B-229710, B-229719, B-229720

Date: February 8, 1988

DIGEST

Protests challenging contracting officer's decision to set aside procurements for competition exclusively among small business concerns are denied where the record indicates the contracting officer had a reasonable expectation that offers would be obtained from at least two small business concerns and where protester fails to show that awards to small business bidders under prior set-aside procurements were not made at reasonable prices.

DECISION

APAC-Tennessee, Inc. protests the issuance by the Army Corps of Engineers of invitation for bids (IFB) Nos. DACW38-88-B-0002, DACW29-88-B-0007, and DACW38-88-B-0001 as total small business set-asides. APAC maintains that the decision to restrict competition under these solicitations to small businesses was improper because there is no reasonable expectation that bids on each solicitation will be received from at least two responsible small business concerns and that awards will be made at reasonable prices, as required by the Federal Acquisition Regulation (FAR) § 19.502-2 (FAC 84-31). We deny the protests.

The solicitations call for articulated concrete mattresses to be cast along the banks of the Mississippi River at Vidalia, Louisiana, St. Francisville, Louisiana, and Greenville, Mississippi, respectively. In previous years procurements conducted by the Corps in these locations for casting concrete mattresses have been set aside for and bid upon by small firms. The protester alleges that in the last 2 to 4 years, an award pattern among three participating firms has developed for the Corps' concrete mattress casting contracts let in these three localities. The protester reasons that in light of that award pattern, the Corps cannot "reasonably" expect any real competition among the three bidding firms for the annual contract where one of these three bidders previously received the award. In other

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words, APAC concludes that in each of the three geographical areas, the low bidder on the annual contract in the preceding year(s) will also be the low bidder on the current solicitation, and thus, restriction of the procurements is improper because there can be no reasonable expectation of more than one "low" bid from the three small firms that traditionally participate in the procurements.

After a contracting office has successfully acquired a product or service on the basis of a small business set-aside, all of that office's future requirements for the same product or service must also be acquired on a set-aside basis unless the contracting officer determines there is no reasonable expectation that at least two responsible small business firms will bid and award will be made at a reasonable price. FAR § 19.501(g) (FAC 84-31).

APAC acknowledges that in immediately preceding acquisitions of concrete mattresses, the contracting offices which issued the protested solicitations have satisfied those requirements under solicitations which were restricted to small businesses. The contracting officers determined there was sufficient interest among small business firms to meet the requirements for restricted solicitations. The record shows that in 1986, the Corps' Vicksburg District issued an unrestricted solicitation for work at Greenville, Mississippi, and found that only one large business--APAC--submitted a bid. In the following year, the New Orleans District received statements of interest in competing from the three bidding firms, following which the Small Business Administration recommended that the solicitation be set aside exclusively for small business.

We have held that the determination as to whether a procurement should be set aside for small business is left to the discretion of the contracting officer, and we will not question that decision absent a clear showing that the contracting officer abused that discretion. Hayes International Corp., B-224119, Jan. 2, 1987, 87-1 CPD ¶ 2; Litton Electronic Devices, B-225012, Feb. 13, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 164.

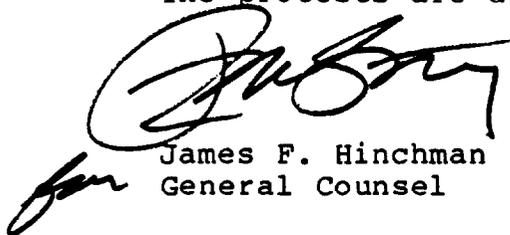
Three bids were received in response to all but one of the subject IFBs, in response to which APAC submitted a fourth bid, even though it was ineligible for award. In two of the procurements the low bid was below the government estimate, and in the third the low bid was only 6 percent above the government estimate. Contrary to APAC's allegations, the low bid received at St. Francisville was not submitted by Wright Mats, Inc., which the protester states was the low bidder for the previous year's contract. In view of these bid results, we find no basis to question the contracting

officers' decisions to again issue these solicitations as small business set-asides. Hayes International Corp., B-224119, supra. To the extent APAC's protest suggests that there is collusive bidding among the three firms which bid on these annual solicitations, that is a matter for consideration by the Department of Justice, not our Office. See Wagster Contracting, B-229060, Sept. 17, 1987, 87-2 CPD ¶ 271.

The protester also contends that in 1986, for the one unrestricted solicitation out of five issued by the Corps for casting concrete mattresses in the relevant geographical area, the government obtained a lower price than the "average" of the low base bids submitted in response to the other four IFBs. APAC expresses the view that the bid results in that unrestricted procurement demonstrates that lower prices could be obtained for each of the subject procurements if they were also conducted on an unrestricted basis.

To implement the purposes of the Small Business Act, a contracting agency generally may award a set-aside at a premium price, if that price is reasonable. APAC-Tennessee, Inc., B-226365; B-227049, Apr. 27, 1987, 87-1 CPD ¶ 438. The protester's statement, without more, fails to show that the low bids submitted by small firms in response to the current or previous solicitations were unreasonable. Further, we note that in the contract year to which APAC refers, all the bids in response to the solicitation for work at Vidalia were below the government estimate, as was the low responsive bid for the requirement at Greenville under the 1986 unrestricted solicitation to which the protester refers.

The protests are denied.



James F. Hinchman
General Counsel