

Skilarew



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rhoads Construction Company, Inc.

File: B-231871

Date: July 26, 1988

DIGEST

Determination by agency to amend a small business set-aside solicitation to allow a preference for small disadvantaged business 20 days prior to bid opening is proper when amendment is necessary to implement recent statute providing for an evaluation preference to small disadvantaged businesses.

DECISION

Rhoads Construction Company, Inc., a small business concern, protests an amendment to invitation for bids (IFB) No. DAHA05-88-B-003 for the construction of an armory at Buckley Army National Guard, Aurora, Colorado, issued by the Department of the Army. Rhoads contends that the IFB was issued without a Small Disadvantaged Business preference, and that the retroactive inclusion of this preference by amendment after nondisadvantaged bidders had incurred bid preparation expenses was unfair.

We deny the protest.

The IFB was issued on May 27, 1988, as a small business set-aside. On June 10, 20 days before bid opening date, the agency issued amendment 3 which gave notice of an evaluation preference of 10 percent for small disadvantaged businesses. This protest followed on July 5, objecting to amendment 3.

Rhoads appears to be arguing that a procuring agency may not amend a defective solicitation, even to ensure that it meets the requirements of an applicable procurement regulation, if bidders have already expended funds in reliance on the solicitation as originally issued. Based on this argument, the protester asserts that the 10 percent preference should be rescinded.

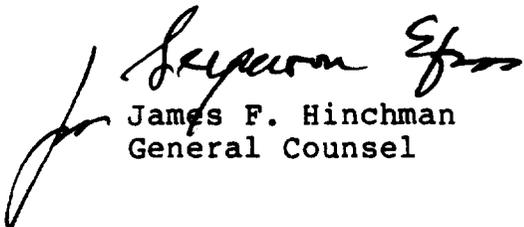
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The agency has responded that amendment 3 simply corrected the original solicitation's failure to comply with regulations implementing Section 1207 of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. No. 99-661, 100 Stat. 3973 (1986), and section 806 of Pub. L. No. 100-180, 101 Stat. 1126 (1986). These regulations, §§ 219.7000(a) and 219.7002(b), 53 Fed. Reg. 5126 (1988) (to be codified at 48 C.F.R. §§ 219.7000(a) and 219.7002(b)), require in these circumstances that a notice of an evaluation preference for small disadvantaged businesses be included in total small business set-asides.

We find no legal basis for Rhoads' argument. The Army advises that the regulation cited applies to all solicitations issued on or after March 21, 1988. This IFB, issued on May 27, should have included notice of the preference. Once it was discovered that the required preference clause had been omitted, the issuance of the amendment was the appropriate corrective action for the Army to take.

Concerning Rhoads' complaint about the timing of amendment as somehow prejudicial because it has spent "thousands of dollars" in preparing its bid, our decisions have found amendments issued as late as 5 hours before bids were to be opened (and excluding a class of bidders) to be reasonable if they met the agency's legitimate needs. See Ogden Allied Services Corp., B-227837.4, July 29, 1984, 87-2 CPD ¶ 115; American Dredging Co., B-201687, May 5, 1981, 81-1 CPD ¶ 344, aff'd on reconsideration, June 17, 1981, 81-1 CPD ¶ 504. Here, the amendment was issued 20 days prior to bid opening and was required to correct the original solicitation's failure to comply with the regulation implementing the statutory intent to increase government contract awards to small disadvantaged businesses. Accordingly, we find no legal basis on which to object to the agency's action.

The protest is denied.


James F. Hinchman
General Counsel