



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Geronimo Service Company

File: B-231637

Date: September 22, 1988

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### DIGEST

1. Protest that solicitation should be set aside for small businesses is denied where the record does not show that the contracting agency abused its discretion in determining that it did not have reasonable expectation of receiving acceptable proposals from at least two responsible small business concerns.
2. Repetitive small business set-aside requirements do not apply where the agency's current need is not just for the performance of a particular service previously procured under a set-aside, but rather is for a contractor to coordinate and manage the performance of numerous other related services.
3. Solicitation for a job order contract properly may emphasize technical or management factors over price.

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### DECISION

Geronimo Service Company protests the decision of the United States Army Engineer District, Honolulu, Hawaii, not to set aside request for proposals (RFP) No. DACA83-88-R-0073 for exclusive small business participation. Geronimo also contends that the RFP's evaluation criteria are unfair to small businesses because management ability is given far more weight than price. We deny the protest.

The RFP sought proposals for a firm, fixed-price, indefinite-quantity contract for maintenance, repair, and minor construction work to be performed at various Army installations on the island of Oahu, Hawaii, under individual job orders. Offerors were requested to submit separate management and price proposals worth a maximum of 70 and 30 points, respectively. The solicitation was not restricted to small business concerns. Of the proposals

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received in response to the RFP, one was from a small business.<sup>1/</sup>

Under the so-called "rule of two," a procurement must be set aside for exclusive small business participation when there is a reasonable expectation of receiving offers from at least two responsible small business concerns, and award will be made at a reasonable price. Federal Acquisition Regulation (FAR) § 19.502-2 (FAC 84-37). The agency's decision not to set this procurement aside was based in part on information received from the Navy's Public Works Center at Pearl Harbor that no small business concerns submitted offers under a similar, unrestricted solicitation issued there. The decision also was based on the findings of an in-house technical review of the capabilities of the small business concerns that had expressed an interest in the type work involved here, and on the concurrence of the Army's Small and Disadvantaged Business Utilization Specialist and the local office of the Small Business Administration (SBA). Another factor in the decision to issue the solicitation on an unrestricted basis, the agency reports, was the need for a contractor with sufficient resources and experience to finance the project and manage a number of subcontractors working concurrently at various Army installations. Finally, the agency advises that, in any event, based on its experience under other job order contracts--whether or not restricted to small business--the bulk of the work required here ultimately will be subcontracted to small business concerns.

Geronimo argues that the Army's reliance on the results of the procurement conducted by the Navy is unreasonable because of the differences in the maximum amounts of the contracts (\$6,000,000 here versus \$12,000,000 in the Navy procurement) and in the types of facilities to be maintained (residential versus industrial). Geronimo also notes that the fact that the Navy procurement was not set aside reduced the chance that small businesses would bid. Geronimo questions the in-house technical review conducted in this case because the agency apparently did not prepare a written report containing the details of that review. Although the SBA concurred in the decision to solicit on an unrestricted basis, Geronimo claims that the SBA was unaware of the maximum contract amount of \$6,000,000, and was under

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<sup>1/</sup> The agency is still conducting negotiations, and therefore does not wish to have the total number of offerors revealed.

the mistaken impression that the contract would require that a certain percentage of the work be performed by small business concerns. Finally, Geronimo argues that the proposed use of a job order contract is an attempt to avoid the requirements of the small business set-aside regulations by combining many requirements into one, large, unrestricted contract. Specifically, because some of the work in the RFP previously was performed under small business set-asides, Geronimo argues that FAR § 19.501(g) requires a repetitive set-aside now.

An agency's determination concerning whether to set a particular procurement aside 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. Salmon and Associates, P.A., B-227079, Aug. 12, 1987, 87-2 CPD ¶ 152. We will question a decision not to set aside only upon a clear showing that the agency abused its discretion. See Anchor Continental Inc., 65 Comp. Gen. 270 (1986), 86-1 CPD ¶ 137.

Based on the record before us, we conclude that the contracting officer did not abuse his discretion in deciding not to set this procurement aside. The record shows that the contracting officer based the determination on information received from the Navy concerning a similar procurement, on an analysis of the capabilities of interested small business concerns, and on the concurring opinions of small business specialists within both the Army and the SBA. The information received from each of these sources suggested that a set-aside would not be appropriate; at the very least, none of the information provided a significant basis for the contracting officer to conclude that responses from at least two responsible small business concerns reasonably could be expected. Although the protester has offered reasons why the contracting officer might have been justified in choosing to discount the information received from these sources, in our view the contracting officer was not required to do so.<sup>2/</sup> The protester has not shown that the contracting officer's

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<sup>2/</sup> For example, we think the contracting officer properly could decide that, notwithstanding the differences between the Navy's procurement and this one, the two procurements were sufficiently similar such that the results in the Navy procurement were a reliable indication of the extent of small business participation that could be expected here.

reliance on this information was unreasonable, or, more importantly, that there was any evidence before the contracting officer sufficient to compel a determination that this procurement should have been set aside.

We also find no merit to the protester's argument that the agency's plan to award a job order contract that would include some work previously contracted for under small business set-asides is inconsistent with regulatory requirements on repetitive set-asides. FAR § 19.501(g) provides that once a contracting office has acquired a product or service successfully under a small business set-aside, all future requirements of that office for that product or service must be acquired under a repetitive set-aside if (as here) required by agency regulations and provided the competition and pricing expectations of the "rule of two," as discussed above, continue to exist. In our view, this provision contemplates that the contracting office has a continuing need to procure the same product or service previously acquired under a set-aside. Here, however, the agency says that rather than continuing to procure maintenance, repair and minor construction services through the award of numerous separate contracts, the agency's needs can be served best through the award of a single, consolidated contract. The agency justifies this approach on the basis that experience has shown that it results in reductions in overall contract costs, job order response time, and contract administration workload.<sup>3/</sup> In effect, the agency is saying that its need has changed, and that its current need is not just for performance by contract of the individual tasks, but for a contractor who can coordinate and manage the more than 25,000 separate tasks involved. Under these circumstances, we think the repetitive set-aside requirements do not apply.

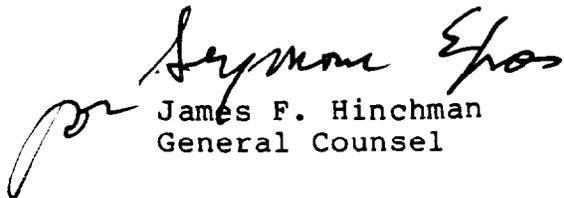
Geronimo further argues that the solicitation's proposed evaluation plan is unfair to small business concerns because management is worth 70 points and price only 30 points. We previously have considered this argument with respect to the evaluation of job orders contracts and have concluded that a

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<sup>3/</sup> We have approved the use of a consolidated contract where one is necessary to meet the agency's needs. See, e.g., A&C Building and Industrial Maintenance Corp., B-230839, July 21, 1988, 88-2 CPD ¶67. We also have reviewed the use of the type of job order contract contemplated here, with particular regard to its possible effects on small businesses, and have found no basis for objection. See generally B-222337, July 22, 1986 (letter to the Chairman, House Committee on Small Business).

solicitation properly may emphasize technical or management factors over price. Salmon and Associates, P.A., B-227079, supra.

The protest is denied.

James F. Hinchman  
General Counsel