



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bowers Envelope Company

File: B-233605

Date: February 15, 1989

DIGEST

Protest that a greater percentage of line items under a solicitation should be set aside for small business concerns is without merit where only one small business had submitted a reasonably priced bid for various line items under the preceding procurement for the same requirement, and the agency did not expect to obtain adequate price competition and to make award at a reasonable price for those items.

DECISION

Bowers Envelope Company protests the determination of the General Services Administration (GSA) not to set aside a greater percentage of contract line items for competition exclusively among small business concerns under invitation for bids (IFB) Nos. 2FYP-EK-88-0002-S-1 and 2FYP-EK-88-0002-S-2 for mailing envelopes. We deny the protest.

The IFBs, issued October 17, 1988, requested bids to supply 44 different styles of envelopes to six geographic zones in the United States for the 8 month period from April 1, 1989 through November 30. Because of the large quantities of envelopes involved, two solicitations were issued for the same total requirement with bid opening scheduled 2 weeks apart.^{1/} The two solicitations contained a total of

^{1/} In fact, the two solicitations were essentially considered by the agency as one solicitation issued in two parts.

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264 line items, and 30 of those were set aside for small businesses. With respect to geographic zone 4, which is the subject of this protest, only one of 44 items was set aside for small businesses.

The contracting officer made the determination as to which zone 4 items were to be set aside by analyzing the results of the previous procurement for the same requirement, including a review of the abstracts of prices received.^{2/} Under the immediately preceding procurement, there were initially 10 small business bidders, including the protester. However, three of the bidders were subsequently rejected; two were determined to be nonresponsible, and one was found to be a large business. Of the remaining seven bidders, an item-by-item analysis revealed, with respect to the items in zone 4, that there was only one line item for which at least two small business had both submitted reasonable prices. (Prices which the agency considered unreasonable ranged from 13.1 percent to 151.8 percent higher than the award price.) Specifically, the analysis showed that while two or more small business bids were received for many line items in zone 4, the agency received no more than one small business bid at a reasonable price for 43 of 44 line items in zone 4.^{3/} Thus, the agency set aside only that one item for which two reasonably priced bids were received from two or more small businesses for exclusive small business competition. The Small Business Administration concurred in the determination. This protest was filed prior to bid opening.

Bowers argues first that because a larger percentage of zone 4 line items was set aside for small business concerns in the past, a similar percentage should have been set aside

^{2/} The agency states that the analysis of the results obtained under the previous procurement was conducted in light of the requirement of the Federal Acquisition Regulation (FAR) § 19.502-2 (FAC 84-37) that an acquisition shall be set aside for exclusive small business participation if the contracting officer determines that "there is a reasonable expectation that (a) offers will be obtained from at least two responsible small business concerns and (b) awards will be made at reasonable prices."

^{3/} The sole reasonably priced small business bid for most of these items was submitted by Bowers.

for the current procurement. The protester contends that an item must be set aside even if only one reasonable price from a small business is expected so long as two small business bids are received, and there is the expectation of making award at a reasonable price. It argues that because Bowers submitted reasonable prices in the past, the agency could expect to make award at a reasonable price under the current IFB.

The agency states that the same method of determining set asides was used for this procurement as in the past, and argues that the Federal Acquisition Regulation (FAR) § 19.502-2 contemplates bona fide competition among small businesses to assure that award will be made at reasonable prices. Based on an analysis of past trends, GSA argues that where there is only one reasonably priced small business bid on an item in the previous procurement, it cannot reasonably expect that award will be made at a reasonable price.

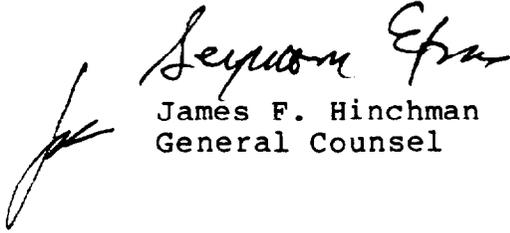
An agency's determination concerning whether to set a particular procurement aside basically involves a business decision within the broad discretion of contracting officials, and our review generally is limited to ascertaining whether those officials have abused that discretion. Geronimo Service Company, B-231637, Sept. 22, 1988, 88-2 CPD ¶ 277. We will question a decision not to set aside only upon a clear showing that the agency abused its discretion. Id.

Based on the record before us, we conclude that the contracting officer did not abuse his discretion in deciding to set aside only one line item for exclusive small business participation. A literal reading of FAR § 19.502-2, quoted above, requires that the agency set aside a procurement if it reasonably expects to obtain two small business bids and reasonably expects that award will be made at a reasonable price. However, we think that the purpose of the requirement in the regulation for obtaining at least two small business bids is to insure adequate competition among small business concerns under a procurement set aside for such concerns. If only one reasonably priced small business bid has been obtained historically, we fail to see how the government can reasonably expect to obtain adequate competition to insure reasonable prices. This is because the sole reasonably priced small business bidder is presumably aware of the lack of price competition in the past and has no incentive to offer the government its best price. Accordingly, we agree with the contracting officer that a set aside is not warranted where historically there has been no bona fide price competition among small business

concerns. Here, since Bowers was the only small business concern to have submitted reasonable prices in the past for these line items, we think the contracting officer properly declined to set aside more than one item in zone 4.

Moreover, it appears that Bowers has successfully competed and is in line for award for many items under the current solicitations even without the items having been set aside for small business.

The protest is denied.



James F. Hinchman
General Counsel