



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Essence Designs

File: B-234916

Date: April 11, 1989

DIGEST

Solicitation requirement that ultimate contractor agree to award subcontracts consistent with the federal policy of providing small disadvantaged business concerns (SDBs) the maximum practicable opportunity to participate in performing contracts does not entitle bidder to receive an evaluation preference based on its SDB status.

DECISION

Essence Designs protests the award of a contract to TEAC American, Inc., under Department of Veterans Affairs (VA) invitation for bids (IFB) No. 578-61-89, for the supply of a videocassette recorder and equipment. Essence alleges that both the IFB and applicable statutes and regulations required the agency to apply a price differential in favor of Essence in evaluating bids as a result of its status as a small disadvantaged business (SDB); according to the protester, its bid would have been low if bids had been evaluated with such a preference.

In support of its position that it was entitled to the benefit of an evaluation preference, Essence cites two standard Federal Acquisition Regulation (FAR) clauses incorporated in the solicitation, FAR §§ 52.219-8 and 52.219-13. However, FAR clause 52.219-8, entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," only requires the ultimate contractor to agree to award subcontracts consistent with the federal policy of providing SDBs and other small business concerns with the maximum practicable opportunity to participate in performing contracts. The clause does not state that any firm will receive an evaluation preference based on its SDB status. Likewise, FAR clause 52.219-13, entitled "Utilization of Women-Owned Small Businesses," does not establish an evaluation preference, but merely requires the contractor to agree to award subcontracts consistent with the federal policy of providing women-owned small businesses the maximum

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practicable opportunity to participate in performing contracts.

Essence further argues that it was entitled to an evaluation preference under section 1207 of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99-661, 100 Stat. 3816, 3973, which establishes for the Department of Defense (DOD) the goal of awarding SDBs 5 percent of the total dollar value of contracts awarded in fiscal years 1987, 1988 and 1989. Section 1207 of the Act, however, applies only to procurements by DOD; it is not applicable to the VA. Accordingly, there is simply no merit to this protest.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in black ink and is positioned above the typed name and title.

Ronald Berger
Associate General Counsel