



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Saxon Corporation

File: B-238652

Date: June 20, 1990

John M. Taffany, Esq., Bailey & Shaw, P.C., for the protester.
Amy S. Nelson, for TECOM, an interested party.
Col. Herman A. Peguese, Office of the Assistant Secretary, Department of the Air Force, for the agency.
Paula A. Williams, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer did not abuse her discretion by issuing an unrestricted solicitation for procurement of vehicle operation and maintenance services which had previously been acquired under a small business set-aside where the contracting officer's knowledge of the market and the procurement history did not support an expectation that proposals would be received from at least two responsible small business firms, and where the scope of the services being obtained has substantially increased since the prior set-aside procurement.

DECISION

The Saxon Corporation protests the decision of the Air Force San Antonio Air Logistics Center to issue request for proposals (RFP) No. F41650-89-R-1009 on an unrestricted basis rather than as a small business set-aside. The RFP solicited offers to provide vehicle operations, maintenance and analysis services (VOM) at Kelly Air Force Base on a fixed-price-plus-award-fee basis for a base period and four 1-year options. Saxon, which did not submit an offer,^{1/}

^{1/} Notwithstanding the agency's arguments to the contrary, although Saxon did not submit an offer under this RFP, it is an interested party to protest because it is a potential competitor if the protest is successful. See Afghan Carpet Servs., Inc., B-230638, June 24, 1988, 88-1 CPD ¶ 607.

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contends that the agency is required by Federal Acquisition Regulation (FAR) § 19.501(g) to issue the solicitation as a small business set-aside because the previous requirement for these services had been procured as a set-aside.

We deny the protest.

FAR § 19.501(g) provides that once a service, such as this, has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements for that particular service shall, if (as here) required by agency regulations, be acquired on the basis of a repetitive set-aside, unless the contracting officer determines that there is not a reasonable expectation of receiving offers from at least two responsible small business concerns and award will be made at a fair market price. See RBC, Inc., B-233589; B-233589.2, Mar. 28, 1989, 89-1 CPD ¶ 316; Geronimo Serv. Co., B-231637, Sept. 22, 1988, 88-2 CPD ¶ 277.

The VOM requirements for Kelly Air Force Base have been successfully procured since 1979 under small business set-asides. Based on a change in the scope of the requirement, and because the prior procurement history indicated that only a limited number of small businesses were available to provide these services, the contracting officer decided to conduct an unrestricted procurement. Saxon contends that the contracting officer should have ascertained the actual availability of small business concerns through a survey and analysis of expressions of interest received in response to a Commerce Business Daily announcement for this procurement and a survey of other Air Force bases that procure similar services. Saxon also contends that while there well may be an increase in the scope of work for the current RFP, that increase is not so significant as to justify the decision to procure these services on an unrestricted basis. We disagree.

With respect to the scope and magnitude of the requirement, the fleet size has increased from 1,293 vehicles under the prior set-aside solicitation to approximately 1,700 vehicles under the current solicitation, and many additional, new requirements were added to this solicitation, including the maintenance of highly specialized vehicles resulting from the dissolution of the San Antonio Real Property Management Agency; requirements for hazardous cargo; and a new mobile maintenance requirement. In addition, the contracting activity considered the fact that other Air Force Logistics Command bases, which have similar VOM requirements, have not set these contracts aside for small business concerns. In view of the substantial increase in the fleet size and the

addition of numerous new contractor functions, we believe that the contracting officer had a reasonable basis to conclude that the services being acquired are sufficiently different from those previously obtained that the repetitive set-aside requirement is inapplicable. See Geronimo Serv. Co., B-231637, supra.

In addition, the contracting officer determined not to set aside the RFP because there was not a reasonable expectation of receiving offers from at least two responsible small business concerns at reasonable prices. A determination concerning whether to set-aside a particular procurement involves a business decision within the broad discretion of contracting officials, which our Office will not disturb unless there is a clear showing that the agency abused its discretion. RBC, Inc., B-233589; B-233589.2, supra.

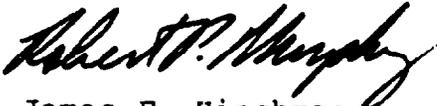
Here, the contracting officer considered the procurement history, particularly the most recent (1987) procurement for these services under which four offerors had participated. The incumbent small business contractor is now a large business, ineligible for any set-aside follow-on procurement. Saxon (which also was a previous contractor for this requirement) had been declared a large business by the Small Business Administration (SBA) at the time of the contracting officer's decision.^{2/} A third small business concern that previously responded to the RFP is on the debarred contractors list until 1992, and a fourth small business competitor has not communicated with the activity since submitting its last VOM proposal, and is possibly no longer in business.

Based on this information, and on her knowledge of the current small business market, the contracting officer concluded that it was unlikely that two small business concerns would compete and, therefore, that a small business set-aside was inappropriate. The small and disadvantaged business utilization program specialist and the SBA representative concurred with this determination. See FAR § 19.506(a).

^{2/} Subsequent to the contracting officer's decision to issue the solicitation on an unrestricted basis, the SBA recertified Saxon as a small business. At the time she made the determination concerning the likelihood of sufficient small business competition, the contracting officer correctly considered that Saxon was not an eligible potential small business offeror.

In our view, the contracting officer was not required to take the additional measures suggested by Saxon since the record indicates that the contracting officer undertook reasonable efforts to ascertain whether the agency was likely to receive offers from at least two qualified small businesses capable of performing the current increased requirements. The information available to the contracting officer provided a reasonable basis for the determination to conduct an unrestricted procurement, particularly in view of the concurrence of the small and disadvantaged business utilization program specialist and the SBA representative. See RBC, Inc., B-233589; B-233589.2, supra.

The protest is denied.


for James F. Hinchman
General Counsel