

Comptroller General
of the United States
Washington, D.C. 20548

144725

Decision

Matter of: Raven Services Corporation

File: B-243911

Date: August 27, 1991

John L. Rullison for the protester.
Merrie C. Shager, Esq., Jones, Day, Reavis & Pogue, for
ColeJon Mechanical Corporation, an interested party.
Jordan A. Strauss, Esq., and David J. O'Connor, Esq.,
Environmental Protection Agency, for the agency.
Katherine I. Riback, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency's determination to solicit for an operations and maintenance contract on an unrestricted basis, rather than through a small business set-aside, is not an abuse of discretion where the contracting officer, after making a reasonable effort to ascertain whether offers from two or more responsible small business concerns would be received, concluded that there was no reasonable expectation of receiving such offers and where the agency's small and disadvantaged business utilization officer concurred with this decision.

DECISION

Raven Services Corporation protests the decision of the Environmental Protection Agency (EPA) to issue request for proposals (RFP) No. C100009T1 for facilities operations and maintenance (O&M) services for the Environmental Monitoring Systems Laboratory at Las Vegas, Nevada on an unrestricted basis. Raven contends that the contracting officer had sufficient information of small business interest to require a set-aside.

We deny the protest.

Prior to 1987, these services had been provided by the University of Nevada at Las Vegas. In 1987, the current contract, which runs through September 30, 1991, was entered into for these services pursuant to section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988). That contractor has "graduated" from the 8(a) program, and on April 2, 1991, EPA

issued the subject solicitation on an unrestricted basis. The RFP contemplates a cost-plus-fixed-fee contract with a base period of 1 year and four additional 1-year options.

An acquisition of services, such as here, is to be set aside exclusively for small business participation if the contracting officer determines that there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns and that award will be made at a fair market price. Federal Acquisition Regulation (FAR) § 19.502-2(a). Generally, we regard such a determination as a matter of business judgment within the contracting officer's discretion which we will not disturb absent a clear showing that it has been abused. RBC, Inc., B-233589; B-233589.2, Mar. 20, 1989, 89-1 CPD ¶ 316. However, the agency must undertake reasonable efforts to ascertain whether it is likely that it will receive offers from at least two small businesses with the capabilities to perform the work, and we will review a protest to determine whether the agency has done so. Stay, Inc., 69 Comp. Gen. 730 (1990), 90-2 CPD ¶ 248.

EPA did not set the requirement aside because the contracting officer determined that she did not have a reasonable expectation of receiving two offers from responsible small businesses. The record shows that in making the determination, she considered several factors. First, she analyzed the nature of this requirement, noting that the technical aspect of the work included support for a facility containing complex and sensitive mechanical, electrical and computerized systems. In this regard, she noted that the agency anticipated the use of a cost-type contract, which required the contractor to have a relatively sophisticated cost accounting system.

Next, the contracting officer observed that since there was no history of competition for this particular requirement, she would have to rely on the procurement history of prior related requirements. She found that two previous solicitations in fiscal year 1988 for O&M services for EPA laboratories in the Western United States were set aside for small business and each yielded only one response. In one of the procurements, the award had to be held up several months while the agency assisted the contractor in setting up an accounting system adequate to meet the financial reporting requirements necessitated by the cost-type contract.

The contracting officer also relied on EPA's experience with two O&M solicitations in process at the time this decision was made. The first solicitation, similar in terms of services and size to the present procurement, was for EPA's Narragansett, Rhode Island laboratory. It was issued on an unrestricted basis and two large and two small businesses responded. The proposals from the two small businesses were

found to be technically unacceptable and the firms were excluded from the competitive range. The second solicitation was for EPA's laboratory in Newport, Oregon; the agency received four proposals, three of which were from small businesses. However, only one small business proposal demonstrated adequate technical capability and was included in the competitive range.

Next, according to the agency, it contacted the Small Business Administration (SBA) to find if there were any 8(a) firms which could perform, and to search its data base to find whether any qualified small businesses existed in the Nevada area. In each instance the answer was no.

Based upon this analysis, the contracting officer concluded that there were no technically qualified small businesses in the geographic area of the laboratory and determined with the concurrence of the agency's Small and Disadvantaged Business Utilization Officer (SDBUO) that the agency would not achieve the required level of small business competition.

Raven first contends that there are a number of small business concerns, including itself, capable of performing this contract and that the EPA did not undertake a reasonable effort to ascertain their existence. Specifically, Raven contends that EPA could have asked the SDBUO to request a national search of qualified small businesses on the PASS system maintained by the SBA^{1/} and states that EPA could have advertised small business interest through the Commerce Business Daily (CBD). The protester also argues that EPA's search should not have been limited to firms in the Nevada area but should have been national in scope. In this regard, Raven points out that EPA did recently set aside for small business a solicitation for similar services in North Carolina.

The use of any particular method of assessing the availability of small business is not required so long as the agency undertakes reasonable efforts to locate responsible small business competitors. See Stay, Inc., 69 Comp. Gen. 730, supra. Factors such as prior procurement history, market surveys and/or advice from the agency's small business specialist and technical personnel may all constitute adequate grounds for a contracting officer's decision not to set aside a procurement. See Afghan Carpet Servs., Inc., B-230638, June 24, 1988, 88-1 CPD ¶ 607. In this instance, we see no reason why the agency's approach, which included reviewing EPA's experience

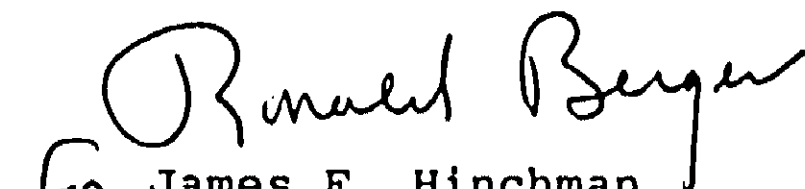
1/ PASS refers to the SBA's nationwide small business bidder's list called the Procurement Automated Source System.

under similar requirements and using the SBA data base, should not be viewed as sufficient.

The protester's also expresses concern that EPA limited its search to technically qualified small businesses located in the Nevada area. The record shows that the agency concentrated its search to firms in the Nevada area because it believed, based upon its experience under the other related solicitations, that it was not reasonable to expect that small businesses located on the East Coast and other areas that are a great distance from the laboratory's Nevada location would propose on this requirement. Under the circumstances, we think that the agency's approach was reasonable. The record contains no evidence of small business firms from the East Coast submitting proposals for EPA's Western requirements. In fact, the protester has cited no specific qualified East Coast small business firms other than itself that expressed interest in this requirement. We do note that the contracting officer did consider at least one East Coast requirement--that of EPA's Narragansett lab--in making her determination.^{2/} In short, we see no basis to disagree with the agency on this point.

We find that the contracting officer acted within her discretion in issuing the RFP on an unrestricted basis. 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 SDBUO. See The Saxon Corp., B-238652, June 20, 1990, 90-1 CPD ¶ 575.

The protest is denied.


for James F. Hinchman
General Counsel

^{2/} Raven also disputes the agency's view that the need for a relatively sophisticated cost accounting system in order to perform this cost-type contract would make it difficult to find qualified small businesses. While it is clear that many small businesses are capable of performing cost-type contracts, we do think that the need for an established cost accounting system can be a legitimate concern in determining whether a particular small business is in fact capable. In this instance, there is no evidence that this factor played a significant role in the agency's final determination.