



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Adrian Supply Co.
File: B-257261.2
Date: March 6, 1995

Bob Stormberg for the protester.
George L. Thompson, Esq., and Karen Davis Huber, Esq.,
Department of Transportation, for the agency.
Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency properly canceled a small business set-aside where there was no reasonable expectation of obtaining bids from at least two small businesses offering products of different small businesses.

DECISION

Adrian Supply Co. protests the cancellation of invitation for bids (IFB) No. DTFAl1-94-B-01013, a small business set-aside, issued by the Federal Aviation Administration (FAA), Department of Transportation, for one automatic closed transition transfer switch and two automatic closed transition transfer bypass/isolation switches to be installed at radar sites in Colorado and Washington. Adrian argues that the agency canceled the IFB to circumvent the recommendations in our decision, Adrian Supply Co., B-257261, Sept. 15, 1994, 95-1 CPD ¶ 21, which sustained Adrian's protest that the IFB improperly permitted award on the basis of a bid which offered other than small business products.

We deny the protest.

As indicated, the IFB, as amended, allowed small business bidders to offer the products of large businesses. Adrian protested prior to bid opening that the contracting officer had improperly obtained a waiver from the Small Business Administration (SBA) of the general requirement that in

small business set-asides only small business products be supplied. The SBA may grant a waiver based on the contracting officer's determination that no known small business manufacturer can reasonably be expected to offer a product meeting the requirements of the solicitation. See Federal Acquisition Regulation (FAR) §§ 19.102(f)(5), 19.502-2(b), 19.508(c). We sustained Adrian's protest, finding that the contracting officer had improperly determined and advised the SBA in seeking the waiver that no known domestic small business manufacturer could reasonably be expected to offer a product meeting the requirements of the IFB. Adrian Supply Co., supra. We noted that, in fact, Adrian and two other small businesses had offered the product of Zenith Controls, Inc., a small business manufacturer of the solicited switches, and that the agency reasonably should have been aware that Zenith was a likely small business source. We recommended that the agency request the SBA to reconsider its waiver and stated that if the SBA declined to issue a waiver and the agency was "authorized" to proceed with a small business set-aside, it should amend the IFB to include the nonwaived rule. On September 30, the contracting officer notified bidders, including Adrian, that the solicitation was canceled, and Adrian filed this protest.

The FAA states this upon resolution of the protest it intends to resolicit but not on a set-aside basis as it has identified only Zenith as a small business manufacturer and FAR § 19.502-2(a) precludes a total small business set-aside unless there is a reasonable expectation that the products of more than one small business manufacturer will be offered.

Adrian protests that the FAA simply is circumventing our prior decision, given that the resolicitation will not be set aside and the agency's needs have not changed. The FAA responds that it canceled the IFB because a total small business set-aside for this requirement is inappropriate; funds available for obligation for the award of a contract under the IFB were about to expire; and the government's requirements have changed because the FAA has already obtained one of the automatic closed transition transfer bypass/isolation switches.²

¹The agency opened bids after Adrian's protest was filed; a small business concern's bid offering the product of a large business was low; Adrian submitted the lowest bid offering the product of a small business manufacturer.

²During the pendency of Adrian's prior protest, FAA engineers discovered that a bypass switch was in agency

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The FAA's cancellation of the IFB is not inconsistent with our prior decision in which we indicated that the agency could proceed with a total small business set-aside if it was "authorized" to do so. Under FAR § 19.502-2(a), it would be authorized to proceed on a set-aside basis if it determined that there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns. Here, no small business manufacturer for the switches other than Zenith Controls has been identified. While Adrian in its prior protest identified other potential small business manufacturers, the agency has ascertained that these sources cannot satisfy this requirement, and this determination has not been shown to be unreasonable. The agency also reports that no previous acquisitions of the solicited switches were successfully conducted on a total small business set-aside basis. See T-L-C Sys., B-225496, Mar. 27, 1987, 87-1 CPD ¶ 354. Under these circumstances, we have no basis to object to the FAA's determination that a set-aside is not appropriate.³

Accordingly, since a set-aside is not appropriate, the contracting officer had a compelling reason to cancel the IFB. See Lawrence W. Rosine Co., 55 Comp. Gen. 1351 (1976), 76-2 CPD ¶ 159; Logistics Int'l, Inc., B-254810, Jan. 21, 1994, 94-1 CPD ¶ 28; Ideal Servs., Inc.; JL Assocs., Inc., B-238927.2 et al., Oct. 26, 1990, 90-2 CPD ¶ 335. That being so, we do not view the agency's action as being inconsistent with our recommendation.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel

²(...continued)

stock that could be used to obtain an automatic closed transition transfer bypass/isolation switch if a transfer switch were obtained. On September 26, 1994 (after our prior decision), a contracting officer from another office who was apparently unaware of Adrian's protest, issued a purchase order under small purchase procedures for the transfer switch.

³Since an improper set-aside is by itself a sufficient basis for cancellation, we need not consider whether the other grounds asserted by the FAA also provided a proper basis for canceling the IFB.