



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Nordic Sensor Technologies, Inc.

File: B-282942

Date: July 23, 1999

Kenneth S. Kramer, Esq., KSK Consulting, for the protester.
Marion T. Cordova, Esq., Department of Agriculture, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Procurement under simplified acquisition threshold for a laboratory electronic sensor instrument was properly set aside for exclusive small business participation where contracting officer reasonably determined that there was a reasonable expectation of obtaining offers from at least two responsible small business concerns at a competitive market price.

DECISION

Nordic Sensor Technologies, Inc. protests the specifications under request for quotations (RFQ) No. 021-4384-99, issued by the Department of Agriculture, Agricultural Research Service as a small business set-aside for the acquisition of a laboratory electronic sensor instrument known as an "electronic nose." Nordic objects that the procurement should not be set aside for exclusive small business participation and asserts that the RFQ specifications are otherwise unduly restrictive.

We deny the protest.

The RFQ was issued on May 26, 1999, by publication in the Commerce Business Daily, with a June 11 due date for receipt of quotes. Designated as a small business set-aside with a standard industrial classification code (SIC) of 3826 and a small business size standard of 500 employees, the RFQ contained a number of performance specifications for a high performance electronic nose system. The government estimate for the procurement was \$40,500. On June 8, Nordic filed this protest with our Office, objecting to the RFQ.

Nordic, which states that it is ineligible to compete under this set-aside, asserted in its protest that the performance specifications call for an electronic nose system that can be furnished by only one company, Alpha M.O.S. America, Inc., which is allegedly not a small business, and that there are no small business concerns that can furnish the required system.

Under Federal Acquisition Regulation (FAR) § 13.003(b)(1), an acquisition with an estimated value exceeding \$2,500 and not exceeding \$100,000 is reserved exclusively for small business concerns and shall be set aside in accordance with Subpart 19.5. FAR § 19.502-2(a) provides, in relevant part, that a set aside of such an acquisition is automatic:

unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery.

As a general rule, the decision as to whether to set aside a particular procurement is within the discretion of the contracting agency. Aspen Sys. Corp., B-272213.2, Oct. 22, 1996, 96-2 CPD ¶ 153 at 3. We will not question a set-aside decision unless an abuse of discretion is clearly shown. Id. Here, there is no basis to conclude that the agency abused its discretion.

It is uncontested that the government estimate for the RFQ at issue falls within the \$2,500 to \$100,000 simplified acquisition range within which the FAR requires that the procurement automatically be set aside for small business concerns absent an appropriate contrary determination. Contracting Officer's Statement of Facts at 1. The contracting officer determined, based on past procurement history and a search of the Small Business Administration's (SBA) listing of small business concerns for the SIC code, that there was a reasonable expectation of receiving offers from at least two small business concerns. Id.

In making this determination the contracting officer specifically considered that the procurement history included two prior solicitations under SIC code 3826, one for an olfactory sensing instrument and the other for a digital aroma technology system, in which award had been made to small business concerns, including one under which offers had been received from two small business concerns. While the protester has submitted a declaration from its manager stating his belief that the three companies identified under the prior solicitations, including Alpha M.O.S. America, Inc., furnished foreign-manufactured systems and are large businesses, Declaration of Aaron D. Kramer, July 5, 1999, at 2-3, the protester has provided no evidence to

support this belief.¹ In this regard, the protester initially asserted that Alpha M.O.S. America, Inc. did not qualify as a small business because it is owned or controlled by a foreign company and provides components from France and elsewhere in Europe. Protest at 2. In fact, by a size determination memorandum dated June 30, 1999, the SBA made a formal determination that Alpha M.O.S. America, Inc. is a qualifying small business under the standards of this procurement because it performs sufficient assembly effort in the United States. The protester subsequently conceded this determination but now asserts that it “likely will appeal” the SBA decision.² Protester’s Comments at 3 n.1. Particularly in view of the SBA determination that at least one of the concerns that Nordic contends is a large business is a qualifying small business, we do not believe that the protester’s opinion about the other firms identified by the contracting officer as potential small business offerors calls into question the reasonableness of the contracting officer’s determination.³ Accordingly, based on the record before us, the agency’s decision to set aside the RFQ for exclusive participation by small business concerns was reasonable and did not constitute an abuse of its discretion.

Because Nordic does not qualify as a small business concern for purposes of this procurement, for which the RFQ was properly set aside for small business, Nordic is not an interested party eligible to protest the other terms of the RFQ. 4 C.F.R. § 21.1(a) (1999); ARO Corp., B-231438, July 22, 1988, 88-2 CPD ¶ 74 at 2.

The protest is denied.

Comptroller General
of the United States

¹Rather than offering any evidence, the declaration is replete with phrases such as “I am confident” and “I am advised.” We view such unsupported statements as having no probative value.

²Although the regulations provide for an appeal from an initial SBA size determination by any concern that has been adversely affected, the pendency of such an appeal would not have any legal effect here. FAR § 19.302 (i); Ultra Tech. Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ 42 at 6-7.

³The fact that the agency apparently has received only one small business offer does not call into question the propriety of the set-aside determination because that determination depends on a reasonable expectation that at least two small businesses will participate, and is not affected by the number of proposals actually received. FAR § 19.502-2(a); Hospital Shared Servs. of Colorado, Inc., B-236005.3, Dec. 22, 1989, 89-2 CPD ¶ 582 at 5.