



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Medical Response of Connecticut, Inc.

File: B-278457

Date: January 30, 1998

Gary D. Jones, Esq., Drubner, Hartley, O'Connor & Mengacci, L.L.C., for the protester.

Phillipa L. Anderson, Esq., Merilee D. Rosenberg, Esq., and Philip Kauffman, Esq., Department of Veterans Affairs, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's determinations to set aside procurements for chair car services for exclusive small business participation are reasonable where they are based on knowledge of previous participation in a procurement for the same services by at least two small business concerns who had submitted bids at fair market prices.

DECISION

American Medical Response of Connecticut, Inc. protests request for quotations (RFQ) No. 689-37-98, and RFQ No. 689-2-98, issued by the Department of Veterans Affairs (VA) for chair car services at the VA Medical Center, West Haven, Connecticut. American Medical protests the issuance of the RFQs as small business set-asides.

We deny the protest.

American Medical, a large business concern, is the incumbent contractor for these services and, for approximately the last year, has been performing on an interim, noncompetitive basis while the agency addressed protests of the solicitation process. During that time, VA issued an invitation for bids (IFB). Three of the six bids received were from small business concerns. The contracting officer considered the prices from all three of these small business concerns to be very competitive with prices bid by the large business concerns. That solicitation was eventually canceled during the pendency of a protest by American Medical.

On September 19, 1997, VA published in the Commerce Business Daily (CBD) an announcement of the issuance of RFQ No. 689-37-98, requesting quotes for providing chair car services for 2 months. The value of the services was estimated to be within the range of \$2,500 to \$100,000 and, considering the previous IFB

where three bids from small business concerns were submitted at fair market prices, the contracting officer determined that competition under the RFQ was required to be restricted to small business concerns under Federal Acquisition Regulation (FAR) § 19.502-2(a). The same day of the CBD publication, four small business concerns inquired about the terms of the RFQ and expressed interest in submitting quotes; three of these concerns were the same small business concerns that had submitted bids under the canceled IFB. American Medical, a large business, was not invited to submit a quote for these services. Subsequently, two of these concerns submitted quotes and award was made to Connecticut Handivan, Inc. on September 29.

RFQ No. 689-2-98, issued on October 16, requested quotes to provide the services for 1 year with 4 option years. The value of this RFQ was estimated to be more than \$100,000 and competition was restricted to small business concerns pursuant to FAR § 19.502-2(b) because, based on the three bids received from small business concerns under the canceled IFB, the contracting officer determined that she was likely to receive at least two quotes from responsible small business concerns and to make award at a fair market price.

On September 30, American Medical was notified of the award to Connecticut Handivan under the 2-month RFQ. On October 10, it faxed a protest to the contracting officer. On October 16, American Medical received notice that its protest was denied. On October 23, it protested the two RFQs to our Office.

American Medical primarily alleges that the RFQs should not have been set aside for exclusive small business participation because Connecticut Handivan is not a small business concern and thus the contracting officer did not have a reasonable expectation of receiving quotes from at least two responsible small business concerns. American Medical also alleges that the contracting officer has acted improperly to favor Connecticut Handivan under the protested RFQs.

FAR § 19.502-2 generally requires that an acquisition be set aside exclusively for small business participation where there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns and that an award will be made at a fair market price. McBer and Co., B-225453, Feb. 11, 1987, 87-1 CPD ¶ 151 at 1; Kimberly-Clark Corp., B-221028, Feb. 11, 1986, 86-1 CPD ¶ 155 at 4. A determination that a particular procurement is to be set aside for small business participation is basically a business judgment within the broad discretion by the contracting officer. McBer and Co., *supra*; Kimberly-Clark Corp., *supra*. In making this determination, the contracting officer need not make determinations tantamount to affirmative determinations of responsibility, but rather need only

make an informed business judgment that there is a reasonable expectation of receiving acceptably priced offers from small business concerns that are capable of performing the contract. McBer and Co., *supra*, at 2; Kimberly-Clark Corp., *supra*, at 5-6. We will not question the set-aside decision of the contracting officer in the absence of a clear showing of abuse of the discretion permitted her. McBer and Co., *supra*, at 1; Kimberly-Clark Corp., *supra*, at 4.

Here, the record does not evidence an abuse of discretion. Even without Connecticut Handivan, there remain two other small business concerns that submitted competitively priced bids under the earlier solicitation. These same two bidders continued to express interest in competing for the services during the approximate time when both of these RFQs were issued. In sum, the contracting officer properly considered the procurement history with two or possibly three apparently responsible bidders who submitted bids at fair market prices as a basis to set aside these RFQs for small business participation. See Kimberly-Clark Corp., *supra*, at 5-6.

To the extent American Medical alleges that “some or all” of these small business concerns may not be capable of performing the contracts, the allegations as they relate to the two small business concerns other than Connecticut Handivan are general and unsupported; these allegations are insufficient to show that the contracting officer’s determination based on procurement history was unreasonable. See APAC-Tennessee, Inc., B-226365, B-227049, Apr. 27, 1987, 87-1 CPD ¶ 438 at 2.

To the extent American Medical challenges Connecticut Handivan’s participation under these RFQs, or the alleged agency actions favoring that firm in these procurements, American Medical is not an interested party to protest these issues. Only an interested party may file a protest. 4 C.F.R. § 21.1(a) (1997); Fermont Div., Dynamics Corp. of Am., B-201062, Mar. 30, 1981, 81-1 CPD ¶ 235 at 3. American Medical is an interested party only with respect to the issue of the legitimacy of the small business set-aside; since the protester is a large business and we have found that the set-asides here are valid, American Medical is not eligible for contract award under the protested RFQs and may not protest to our Office other aspects of these procurements. Fermont Div., Dynamics Corp. of Am., *supra*.

The protest is denied.

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