

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-183108

DATE: June 16, 1975

MATTER OF: Southeastern Services, Inc., and MC&E Service
and Support Co., Inc.

DIGEST:

1. While failure to attend prebid conference and site visit cannot be made basis for disqualifying bidder, restriction of prebid conference and on-site visit to 1 day only not arbitrary or capricious since bidders were supplied substantially similar information by responsible personnel present to answer all questions and since there were five different facilities in constant operation visits would have to be conducted by base personnel to insure safety of visitors and to make sure that operations were not disrupted. To allow separate site visits on procurement involving 68 prospective bidders and to insure that all bidders observed facilities under same conditions would require unreasonable expenditure of time by base personnel.
2. Procuring activity's restriction of prebid conference and on-site visit to 1 day only was not restrictive of competition where 13 responses to the IFB were received, all bidders received adequate notice of conference and on-site visit, and all bidders were treated equally and supplied substantially similar information.
3. Determination by SBA that successful bidder was not small business under Army procurement and received by Air Force subsequent to award, not for consideration in connection with Air Force procurement since determination was not received in time to be considered as notice to contracting officer on Air Force procurement that self-certification of successful bidder that it was small business concern was in error. Neither was there a timely protest as to size status received by Air Force. Consequently, Air Force did not violate regulations concerning self-certification. However, SBA determination will be considered in future procurements.

By letter dated January 24, 1975, Southeastern Services, Inc. (Southeastern), protested against the opening of any bids received in response to invitation for bids (IFB) F01600-75-09074,

issued by the Base Procurement Office, Maxwell Air Force Base, Alabama. The basis for Southeastern's protest was that on January 22, 1975, it had sent two representatives to Maxwell Air Force Base for the purpose of inspecting the base facilities in anticipation of submitting a bid. However, the Food Service officer refused to allow Southeastern's representatives to inspect the facilities. It is contended by Southeastern that this action by the Food Service officer was arbitrary and capricious and clearly a move on his part to limit competition and that no where in the invitation was it indicated that it was a requirement of any and all bidders to be present on a specific date.

The above-mentioned IFB, issued on November 18, 1974, requested bids for furnishing food services for five separate facilities at Maxwell Air Force Base and Gunter Air Station and was a total small business set-aside. Initially, IFB's were mailed to 37 prospective bidders. By letter of November 21, 1974, the procuring activity requested that a synopsis of the procurement be published in the Commerce Business Daily. By December 26, 1974, a total of 68 IFB's had been sent to prospective bidders. The record indicates that an IFB was mailed to Southeastern on December 6, 1974.

All bidders were advised by a statement on the face sheet of the IFB that a prebid conference and on-site visit would be held on January 8, 1975. Therefore, most of the prospective bidders, including the protester, had at least 4 weeks notice of the prebid conference and on-site visit. It was the view of the contracting officer that this would provide sufficient time for making the necessary arrangements to attend these prebid events. According to the contracting officer, prior to January 8 two bidders requested permission to visit the food service facilities but were advised that no site visits would be allowed except on January 8, at which time responsible personnel representing food service, procurement and manpower offices would be together to answer all questions.

The contracting officer also reports that the determination to allow site visits on January 8 only was based on several factors. First of all, it was felt that this approach would afford fair and equal treatment for all bidders inasmuch as responsible personnel would be present to answer all questions. Also, a transcript of the questions and respective answers generated during the site visit and conference would be furnished to all bidders regardless of whether or not they attended these

prebid events. Consequently, no bidder would receive an unfair advantage by obtaining information not available to all bidders or be disadvantaged by receiving misleading or incorrect information from persons not familiar with the solicitation requirements. The contracting officer further explained that each bidder would view the respective facilities under the same circumstances and not be subjected to varied circumstances observed during separate visits which could be categorized as other than normal operations.

Additionally, the contracting officer explained that there are five different facilities in constant operation and there are health and sanitary regulations governing wearing apparel and health of personnel entering these areas. This would preclude bidders from entering the areas at any time they desired. Also, the visits would have to be arranged to insure the safety of the visitors and to make sure that food services were not disrupted. The contracting officer concluded that on a procurement involving 68 prospective bidders in order to insure that all bidders observed the facilities under the same conditions would require an unreasonable expenditure of time by procurement and food service personnel if each bidder were allowed to make separate site visits.

Based upon this record, we cannot conclude that the action taken by the Food Service officer in restricting the site visits to 1 day was arbitrary and capricious.

Concerning Southeastern's allegation that the invitation did not require that all bidders be present on a specific day, it is recognized by the procuring activity that attendance at the prebid conference and site visit on January 8, 1975, was not required. For that matter, we have held that the Government cannot make attendance a mandatory condition of submitting a bid. 52 Comp. Gen. 955 (1973). Also, see B-170884, July 2, 1971. We have also held that the preproposal conference procedures set forth in Armed Services Procurement Regulation (ASPR) § 3-504.2 (1974 ed.) and followed by the procuring activity in the present case (1) only contemplate voluntary attendance, and (2) provide no basis for disqualifying an offeror who fails to attend such a conference. B-164675, September 17, 1968. Also, see 50 Comp. Gen. 355 (1970). While there is no question that attendance at the prebid conference and site visit could not be required as a condition to submitting a bid, the question remains as to whether a separate prebid conference and site visit is a matter of right. We do not believe that the procedures set forth in ASPR § 3-504.2 (1974 ed.) preclude restricting prebid conferences and site visits to 1 day only so

long as bidders are treated equally and supplied substantially similar information. There is no evidence to indicate that the bidders were not so treated in the present case.

Regarding Southeastern's allegation that the action taken by the Food Service officer limiting prebid conferences and site visits to January 8 was restrictive of competition, we note that 13 bids were received in response to the solicitation and that four of these bids were from firms who had requested, but had been denied, separate site visits. This indicates, in our view, that competition was in no way restricted.

For the above reasons Southeastern's protest is denied.

In connection with this procurement, another bidder, MC&E Service and Support Company, Inc. (MC&E), protested the award made on April 1, 1975, to ABC Food Service Incorporated (ABC) on the basis that ABC had been determined by the Small Business Administration (SBA) not to be a small business concern. In this regard, we were advised by the Air Force that MC&E had protested ABC's size in connection with an invitation, IFB DAKF06-74-B-0074, issued by the Army for mess attendant services at Fort Carson, Colorado, and that the SBA did make a determination, dated March 28, 1975, that ABC was not a small business. However, it was not until April 9, 1975, that the Air Force learned of SBA's size determination of ABC. Prior to this time, no written protest concerning the size status of ABC was lodged with the contracting officer by MC&E in connection with the present solicitation.

Under ASPR § 1-703 (1974 ed.) a contracting officer is required to accept at face value, for the particular procurement involved, a certification by the bidder that it is a small business concern unless a written protest is received from another bidder concerning the size status of the apparently successful bidder or the contracting officer questions the small business status of the bidder and submits his question to the SBA for determination, neither of which was done in the present case. The regulations also provide that a size protest will be considered timely only if submitted to the contracting officer prior to the fifth working day after bid opening.

Since it appears that the Air Force was not aware of such determination until after award of the instant contract, and since there was not a timely "written protest" as to ABC's size status lodged by MC&E or any other bidder under this invitation

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we cannot say that the procuring activity violated the procedures set forth in the regulations in accepting ABC's self-certification and making an award to it.

While the question of ABC's size status was not timely presented under this procurement the Air Force advises us that SBA's determination under the Army procurement will be considered in future Air Force procurements.

Accordingly, MC&E's protest is denied.


Deputy Comptroller General
of the United States