

DECISION



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

Protest Against RFP Issuance as Total Small Business

FILE: B-197974

DATE: June 23, 1980 Set-As

MATTER OF:

All American Engineering Company DLG 048

DIGEST:

1. Protest alleging procurement should not have been set aside for small business concerns is denied because whether procurement should be set aside is within authority and discretion of contracting officer. GAO will not substitute its judgment in absence of clear showing of abuse of discretion.
2. Once determination is made that small business set-aside is proper, large business protester is no longer interested party and GAO will not consider its objection to use of negotiation procedures for procurement.

All American Engineering Company (AAE) protests the issuance of request for proposal (RFP) No. N00140-80-R-0411 as a total small business set-aside by the Naval Regional Contract Office, Philadelphia, Pennsylvania. DLG

AAE contends that the effect of restricting the procurement to small business firms only is to reduce competition and increase the prices. AAE argues that the procurement should have been a partial set-aside for labor surplus area (LSA) firms because under Defense Acquisition Regulation (DAR) § 1-706.1(a) (1976 ed.) partial set-asides to LSA firms are preferred. AAE claims to be an LSA firm. AAE further suggests that a total small business set-aside was prohibited under DAR § 1-706.1(j)(ii) because AAE intends to become a Planned Emergency Producer. See DAR § 1-302.5. Finally, AAE complains that the use of negotiation rather than formal advertising procedures for this procurement was improper.

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DAR § 1-706.5(a)(1) provides that procurements shall be set aside for exclusive small business participation if the contracting officer determines that there is reasonable expectation that offers will be obtained from at least two responsible small business concerns and award will be made at a reasonable price.

Determinations that a particular procurement is to be set aside exclusively for small business and that the procurement cannot be severed to permit partial set-aside are judgments which require the exercise of broad discretion by the contracting officer. See Tracor, Inc., B-195736, January 24, 1980, 80-1 CPD 69; Otis Elevator Company, B-194147, May 10, 1979, 79-1 CPD 331. We will not substitute our judgment for that of the contracting officer in the absence of a clear showing of abuse of the discretion permitted him. Otis Elevator Company, supra; Atlas Guard Service, McCracken Security Agency, B-193453(3), May 8, 1979, 79-1 CPD 318.

The record in this case does not indicate that the contracting officer abused his discretion in determining that this procurement should be a total small business set-aside. According to the contracting officer--

"* * * On the basis of procurement history the contracting officer determined that offers would be obtained from at least two responsible business firms and award would be made at reasonable prices. The response to the solicitation clearly demonstrates the expectation of adequate competition was clearly accurate."

The protester confirms the procurement history stating that:

"* * * eight out of ten of the bidders who participated in the instant procurement were small businesses and all have

demonstrated an ability to compete very adequately * * *."

Therefore, we find the contracting officer had a reasonable expectation that competition would exist in a small business set-aside.

Further, the contracting officer states a decision was made not to use an LSA set-aside in this instance. Partial LSA set-aside is preferred under the regulation over total small business set-aside. However, the contracting officer determined that the procurement could not be severed because the quantity required was small. The instant procurement was for 29 engine assemblies at approximately \$35,000 each. The contracting officer notes these are extremely large and complex units and further notes:

"* * * Dividing the small quantity of 29 units would very likely result in the Government paying a substantial premium because of the significant nonrecurring costs which would be spread over a number of smaller units."

AAE has not submitted any evidence to indicate that this determination was improper.

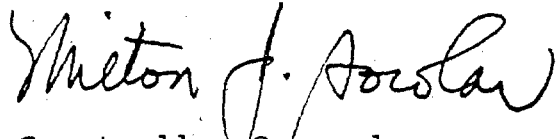
AAE suggests that its intention to become a Planned Emergency Producer precludes issuance of the solicitation as a small business set-aside. DAR § 1-706(j)(ii) states that there is sufficient cause for not making a set-aside when a Planned Emergency Producer desires to participate in the acquisition.

While AAE may intend to become a Planned Emergency Producer, it was not a Planned Emergency Producer when the solicitation was issued. Therefore, the prohibition of total small business set-asides when Planned Emergency Producers are involved has no application in this case. Tracor, Inc., supra.

Finally, AAE challenges the use of negotiation procedures for the procurement. The Bid Protest Procedures of this Office provide that only an "interested

party" may file a protest. 4 C.F.R. § 20.1(a) (1980). AAE is an interested party only with respect to the legitimacy of the small business set-aside. Once the set-aside has been determined to be valid, AAE, as a large business, is not eligible for the contract award and cannot be considered an interested party. Atlas Guard Service, McCracken Security Agency, supra; DoAll Iowa Company, B-187200, September 23, 1976, 76-2 CPD 276. Therefore, GAO will not consider the objection.

The protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States