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

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FILE: B-212253 DATE: November 14, 1983

MATTER OF: Interior Steel Equipment Co.

DIGEST:

1. Protest that procurement should have been set aside for small businesses is denied since, with certain exceptions not relevant here, nothing in the Small Business Act or regulations mandates that any particular procurement be set aside exclusively for small business participation.

2. Agency determination to use f.o.b. destination delivery requirement and servicing and warranty requirements on International Federal Supply Schedule will not be disturbed where, as here, there has been no clear showing that the determination is unreasonable.

Interior Steel Equipment Co. (Interior Steel) protests negotiated solicitation No. BO/FS-L-00423, issued by the General Services Administration (GSA), to establish the International Federal Supply Schedule (IFSS) program.

We deny the protest.

The solicitation reflects a new effort by GSA to improve the provision of supplies and services to government activities located outside of the continental United States (CONUS), Alaska, Hawaii and Puerto Rico, at reasonable prices, delivered to their location, with the necessary warranty and service. The schedule will be a negotiated multiple-award type which also will be optional for all activities. The optional use will permit overseas activities to compare prices and services to determine whether it is more advantageous to place orders through the IFSS (with delivery made to a CONUS port or consolidation point) or to purchase locally.

Interior Steel first contends that the solicitation should have been a total small business set-aside for clothing lockers. To support this argument, Interior Steel states that Federal Procurement Regulations (FPR) § 1-1.706-1(c) (1964 ed. amend. 192) requires that a

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set-aside be effected when the contracting officer determines it to be in the interest of assuring that a fair proportion of government procurements are placed with small business concerns. Also cited is FPR § 1-1.706-5(a)(2), which provides that, if a reasonable expectation exists that offers will be obtained from a sufficient number of small business firms to assure awards at reasonable prices, the solicitation should be totally set aside. Interior Steel contends that the past procurement history is an important factor to be considered in determining whether the requisite "reasonable expectation" exists. Interior Steel argues that, although the IFSS is new, the procurement history of clothing lockers under the GSA domestic Federal Supply Schedule (FSS), which lists them as a 100-percent small business set-aside, establishes that this item in the schedule should have been set aside.

GSA reports that the decision not to set aside the procurement was made because there was inconclusive evidence that a sufficient number of small businesses had the capability of delivering to overseas destinations and had the onsite capability to perform the service and warranty requirements. The previous history was not relevant, according to GSA, since the scope of the FSS contract was limited to the CONUS.

On this issue, we have repeatedly recognized that, with certain exceptions not relevant here, there is nothing in the Small Business Act, 15 U.S.C. § 637, et seq. (1982), or federal procurement regulations, that makes it mandatory that any particular procurement be set aside for small businesses. While the government's policy is that a fair proportion of purchases be placed with small business concerns, the decision whether a particular procurement should be set aside for small businesses essentially is one within the discretion of the contracting activities. See, e.g., A and W Products, B-207063, April 27, 1982, 82-1 CPD 394. Therefore, we cannot legally object to GSA's decision not to set aside the items for small businesses.

Second, Interior Steel contends that the f.o.b. destination requirement is unreasonable in light of the fact that the award is for delivery of an indefinite quantity to different countries (some without ports of entry). Interior Steel believes this requirement will increase the government's cost because most businesses will incorporate a "safety margin" to cover the uncertainties. Also, it is contended that the overseas warranty and servicing provisions are unnecessary.

GSA reports that the overseas servicing and warranty provisions are an attempt by GSA to correct the problems experienced by overseas activities that used the domestic FSS. In the past, governmental activities located outside CONUS had difficulty in obtaining reasonably priced goods and services because of the long delivery leadtimes required and the absence of warranties. GSA indicates there would not be a need for a separate schedule if special provisions to address overseas user needs were not addressed.

We have recognized that government procurement officials, who are familiar with the conditions under which supplies, equipment, or services have been used in the past and how they are to be used in the future, are generally in the best position to know the government's actual minimum needs and, therefore, are best able to draft appropriate specifications. Interscience Systems, Inc., B-205458, March 9, 1982, 82-1 CPD 220. Therefore, we will not question an agency's determination of what its actual minimum needs are unless there is a clear showing that the determination has no reasonable basis. In our opinion, the requirements are founded upon a reasonable basis. Therefore, we will not object to their use.

The protest is denied.

Milton J. Socolar

Acting Comptroller General
of the United States