

DECISION



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

27493

FILE: B-213002

DATE: February 22, 1984

MATTER OF: Advance, Inc.

DIGEST:

1. Protest alleging the agency has not complied with applicable Federal Procurement Regulations (FPR) is denied since competitive and procedural requirements of FPR do not apply to contracts under the 8(a) program of the Small Business Act and review of solicitation indicates that evaluation criteria and relative importance of price were clearly defined.
2. Determination of whether a proposed contract is subject to the Service Contract Act is for the procuring activity and will not be questioned by our Office unless it is shown to be unreasonable.

Advance, Inc. (Advance), protests the award of a contract to Applied Systems Institute (ASI) under request for proposals (RFP) No. 83-25 issued by the Small Business Administration (SBA). The procurement is for the production of a detailed systems design for the implementation of a comprehensive automated management information and communication system. Advance contends that the solicitation is defective since it fails to state the evaluation relationship between price and technical excellence, fails to disclose the basis on which technical proposals will be evaluated and improperly limits discussions with only the highest technically ranked offeror. Also, Advance argues that the SBA did not comply with the Service Contract Act and that appropriate administrative approval was not obtained prior to issuing the solicitation.

We deny the protest.

SBA solicited this requirement as a set-aside under the authority of the "8(a)" program of the Small Business Act, 15 U.S.C. § 637 (1982), 13 C.F.R. part 124 (1983).

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Under section 8(a), the SBA is authorized to enter into contracts with any government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to economically disadvantaged small business concerns.

SBA solicited technical proposals from seven 8(a) firms believed capable of performing the contract. Four firms submitted technical proposals and pricing data. A technical evaluation panel reviewed the proposals and recommended that award be made to ASI. On this basis, SBA awarded a contract to its Washington district office, which in turn awarded a subcontract to ASI.

Because of the broad discretion afforded the SBA and the contracting agencies under the Small Business Act, our review of actions under the 8(a) program is generally limited to determining whether the SBA has followed pertinent regulations and whether government officials have committed fraud or acts of bad faith. Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39. In addition, our decisions have recognized that section 8(a) of the Small Business Act authorizes a contracting approach which in general is not subject to the competitive and procedural requirements of the Federal Procurement Regulations (FPR) and the statutory provisions they implement. Arawak Consulting Corporation, 59 Comp. Gen. 522 (1980), 80-1 CPD 404.

Based on the record, we find nothing improper in the solicitation issued by SBA or in the manner in which SBA conducted this procurement. Under the 8(a) program, there is no requirement to hold competitive range discussions. Health Services International, Inc., B-205060, May 25, 1982, 82-1 CPD 495. Furthermore, we find that the RFP did contain a clear statement of the relative importance of price in the SBA's evaluation of proposals. The RFP indicated that selection will be based on the highest technical score achieved subject to the negotiation of a fair and reasonable price. In our view, such a statement adequately informs offerors that the winner of the technical evaluation will be selected for negotiations leading to the award of an 8(a) contract. We find nothing improper with this approach. See Health Services International, Inc., supra.

With respect to the technical evaluation criteria, Advance contends that the criteria are so ambiguous that they fail to disclose the basis on which technical

evaluation will be made. The solicitation listed six factors which would be considered by the SBA in evaluating each proposal. They are as follows:

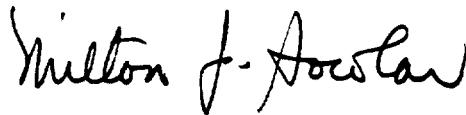
<u>"Criteria</u>	<u>Points</u>
"Experience in performing systematic needs analyses and management information systems design.	30
"Ability to design models for management statistical, and financial analyses.	20
"Knowledge of currently available data base management systems and equipment, their capacities, capabilities, and costs.	20
"Ability to translate identified needs into workable systems.	15
"Availability of qualified and experienced professionals to conduct needs analyses and develop systems design.	10
"Understanding of function, specifications, and components of the 8(a) program."	5

Although Advance may have preferred additional information concerning the type of material to submit with its proposal, we consider the above-quoted evaluation criteria to be sufficiently clear and definitive to apprise offerors of the basis on which their proposals would be evaluated. See Washington School of Psychiatry, B-189702, March 7, 1978, 78-1 CPD 176.

Advance also contends that the solicitation clearly calls for the provision of services in the data management area and that the SBA has ignored the Service Contract Act, 41 U.S.C. § 357 (1976), by failing to notify the Department of Labor of this procurement. The determination of whether a proposed contract is subject to the Service Contract Act is for the procuring activity and it will not be questioned by our Office unless it is shown to be unreasonable. Non-public Educational Service, Inc., B-207306.2, October 20, 1982, 82-2 CPD 348. SBA contends that the contract is actually for the delivery of a product and that, to the

extent services are involved, they are for professional services not covered by the Service Contract Act. See 41 U.S.C. § 357(b). Advance does not challenge this determination and we cannot find it to be unreasonable.

Finally, Advance argues that the contract is for consulting services and that the SBA did not obtain the required administrative approval prior to issuing the solicitation. See 41 C.F.R. § 1-4.803(a)(5)(ii) (1983). However, under 41 C.F.R. § 1-4.803(a), the contracting officer is responsible for determining whether a solicitation is for consulting services and the SBA has indicated that it views this requirement as calling for the delivery of a product rather than for consulting services. Advance has offered no additional evidence in support of its allegation and, accordingly, we find this protest ground also without merit.

A handwritten signature in black ink, reading "Milton J. Howland". The signature is written in a cursive, flowing style.

Acting Comptroller General
of the United States