

DECISION



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

30065

FILE: B-215967

DATE: December 27, 1984

MATTER OF: Western States Industries, Inc.

DIGEST:

1. Protest that solicitation's lease termination provision excludes offers from small business and results in a higher than required cost to the government is denied where the agency establishes that the provision meets its legitimate minimum needs.
2. Protest that solicitation's lease termination provision should be deleted to allow more potential respondents to the solicitation is denied, since propriety of particular procurement is judged on whether government is obtaining reasonable prices through adequate competition and agency's receipt of responsive proposals at acceptable prices indicated adequate competition was available.

Western States Industries, Inc. (Western), protests the award of any contract under request for proposals (RFP) No. ASCS-81-099-2, issued by the United States Department of Agriculture, Teton County Agricultural Stabilization and Conservation Committee, to lease office, warehouse and storage space in Choteau, Montana. Western contends that the RFP's lease termination provision excludes offers from small businesses and results in a higher than required cost to the government. We deny the protest.

The RFP provides that the initial term of the lease will be:

"One (1) five-year firm-term period, with a clause that provides termination only if one of the following applies: (1) funds for

030859

continuing to operate the office are not available. (2) Appropriate authority determines that the office will move to another location."

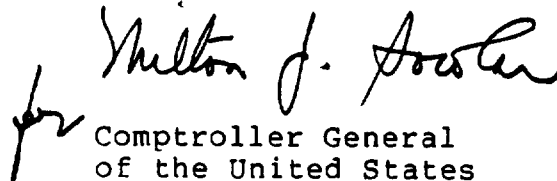
According to Western, the risk of premature lease termination presented by this provision prevents using the lease as collateral to support the long-term financing needed to construct the required facility. Western feels that since the facility, which would have minimal general utility, would cost about \$400,000, it would require a net worth of several million dollars to respond to the RFP, thereby eliminating the small businessman. Western also asserts that the risk of premature lease termination causes offerors to price their offers high, resulting in a substantial increase of yearly rental and an inappropriate expenditure of public funds.

Our Office has held that the contracting agency has the primary responsibility for determining its minimum needs and for drafting requirements which reflect those needs. It is the contracting agency which is most familiar with the conditions under which services will be used, and our standard for reviewing protests challenging agency requirements takes this into account. Our Office will not question agency decisions concerning the best methods of accommodating their needs absent clear evidence that those decisions are arbitrary or otherwise unreasonable. Romar Consultants, Inc., B-206489, Oct. 15, 1982, 82-2 C.P.D. ¶ 339.

We find that the Agricultural Stabilization and Conservation Service (ASCS) has adequately established the reasonableness of the lease termination provision. According to ASCS, the termination provision is in accordance with ASCS operating instructions used by county committees in all states. The funds needed to pay future rental costs are made available annually by congressional appropriation. The termination provision merely covers contingencies over which ASCS has no control, e.g., if Congress fails to provide funding for these offices, or if Congress dictates a shift in agricultural programs, causing offices to no longer be needed. As to Western's reference to the difficulty of small businesses securing financing, ASCS reports that inquiries to local banks showed that loans would be available under the terms offered by the solicitation. The successful offeror, a small business, was able to secure loan commitments from three banks on a competitive basis.

Although Western contends the termination provision should be deleted to allow more potential respondents to the solicitation, we judge the propriety of a particular procurement not on whether every potential contractor is included, but from the perspective of the government's interest in obtaining reasonable prices through adequate competition. Memorex Corporation, B-212660, Jan. 7, 1984, 84-1 C.P.D. ¶ 153. We have held that adequate competition is obtained where two responsive, reasonably priced bids have been received. Scripto Inc., B-209450, Nov. 9, 1982, 82-2 C.P.D. ¶ 431. According to ASCS, two small businesses responded to the RFP, and prices offered by their responsive proposals were acceptable. It thus appears that adequate competition was obtained.

The protest is denied.


Comptroller General
of the United States