



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Waste Management, Inc.

File: B-225676

Date: March 26, 1987

DIGEST

Decision to amend solicitation to set-aside procurement for small businesses after initially issuing solicitation on an unrestricted basis is proper where agency shows set-aside determination based on information discovered after the solicitation was issued was reasonable.

DECISION

Waste Management, Inc. (Waste Management), a large business concern, protests the determination of the Air Force to set aside for exclusive small business participation invitation for bids (IFB) No. F05604-86-B-0079, for refuse collection at Peterson Air Force Base (Peterson) and NORAD Cheyenne Mountain Complex (NCMC). Both Peterson and NCMC are located in Colorado Springs, Colorado.

We deny the protest.

The IFB was issued on August 14, 1986, on an unrestricted basis. The record indicates that the contracting officer made the determination not to set aside this procurement based on the fact that only one small business had bid in a previous procurement for refuse collection services for NCMC.

On August 25, 1986, C&S Sanitary, a small business, protested to the contracting officer the decision not to set aside the IFB. C&S stated that both C&S and another small business intended to bid under the current solicitation. By letter of September 9, 1986, the contracting officer denied C&S's protest to set-aside the procurement based on the finding of insufficient small business interest in past procurements for these services. However, the contracting officer subsequently reversed the decision after learning that seven small business concerns bid in a recent procurement for refuse collection services for the United States Air Force Academy in Colorado Springs, which uses the same supply sources for refuse collection as Peterson and NCMC. The contracting

officer, prior to bid opening, issued an amendment setting aside the procurement for exclusive small business participation.

Waste Management argues that, in determining to set-aside this solicitation, the contracting officer improperly relied on the bidding results of the Air Force Academy procurement instead of the procurement history for Peterson and NCMC. The firm also contends that the set-aside decision was based on improper political pressure. Finally, Waste Management argues that the set-aside determination was improper because the contracting officer made the determination "without finding the responsibility" of small business concerns.

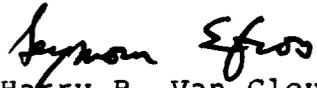
In a recent decision, Waste Management, Inc., B-225403.4, Jan. 30, 1987, 66 Comp. Gen. ____, 87-1 C.P.D. ¶ ____, we denied Waste Management's protest against the Air Force's determination to set-aside for small businesses a procurement for refuse collection at the Air Force Academy in Colorado Springs, Colorado, after initially issuing the solicitation on an unrestricted basis. We found the Air Force's decision to postpone bid opening and amend the solicitation to set-aside the procurement reasonable because the determination was based on new information (that numerous small businesses intended to bid) discovered after the solicitation was issued. In fact, in that procurement, seven small business concerns bid and four of those firms submitted prices lower than Waste Management's price.

Waste Management's primary basis of protest here is that the contracting officer cannot rely on the small business interest in the Air Force Academy procurement as the basis for setting aside this procurement. We disagree. The record is clear that the same small business firms participating in the Air Force Academy procurement can be considered for this procurement since all these activities are located in the same place, Colorado Springs, Colorado. In fact, two small business firms which bid on the Air Force Academy procurement expressed interest in competing for this requirement. Waste Management does not refute these facts. Under these circumstances, we think the contracting officer properly relied on the information from the Air Force Academy procurement, discovered after the solicitation was issued, to support the set-aside determination here. See, e.g., American Dredging Co., B-201687, May 5, 1981, 81-1 C.P.D. ¶ 344.

In the Waste Management decision, since we also rejected Waste Management's contention, raised again here, that the set-aside decision was based on improper political influence

since Waste Management clearly did not rebut the reasonableness of the agency's expectation, based on new information discovered prior to bid opening, that bids would be received from at least two responsible small businesses. Also, in response to Waste Management's assertion that the set-aside determination was improper because it was made without finding the responsibility of at least two small businesses (which the protester again raises here), we explained that the Air Force need not make a determination tantamount to affirmative determinations of responsibility before determining to set aside a procurement for exclusive small business participation. See Waste Management, Inc., B-225403.4, 66 Comp. Gen. ____, supra. Since the protester has not presented any arguments or new information distinguishing these protest bases from those which we have already considered and denied, we see no reason to consider them again here. See Cannon U.S.A., Inc., B-213554, Aug. 20, 1984, 84-2 C.P.D. ¶ 195.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel