



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Brown & Root Services Corporation

File: B-228347

Date: December 18, 1987

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### DIGEST

Decision to postpone bid opening and reclassify solicitation as a 100 percent small business set-aside after initially issuing solicitation on an unrestricted basis is proper where based upon information discovered after the solicitation was issued, the contracting officer determines that there is a reasonable expectation that bids will be received from at least two responsible small business concerns and award can be made at reasonable prices.

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### DECISION

Brown & Root Services Corporation (B&R), a large business concern, protests a reclassification by the Air Force of request for proposals (RFP) No. F41650-87-R-8010 to a 100 percent small business set-aside. The RFP is for miscellaneous real property maintenance, repair and improvement projects at Kelly Air Force Base, Texas. The protester contends that the Air Force abused its discretion in determining that this procurement should be set aside after initially issuing the RFP on an unrestricted basis.

We deny the protest.

The Air Force placed a notice of its intention to contract in the February 10, 1987 issue of Commerce Business Daily. Based on a review of the 16 companies which responded to the advance synopsis, the Air Force decided to solicit both large and small companies for this acquisition. An unrestricted RFP, for an indefinite quantity, firm, fixed-price contract, was issued on April 30, 1987, with date of receipt of offers set for June 15. The second amendment<sup>1/</sup> to the RFP, dated May 19, extended the date set for receipt of offers indefinitely in order to give the government time to

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<sup>1/</sup>The first amendment to the solicitation is irrelevant to the issues in this protest.

revise the Unit Price Book (UPB). In early September, Air Force Headquarters issued a policy letter requiring that all task order acquisitions of this type be set aside. The contracting officer, after making additional market survey efforts and after receipt of policy letter, decided, after consultation with the Small and Disadvantaged Business Utilization Office, that there was an expectation of reasonable offers being received from at least two small responsible businesses. Thus, he determined that the acquisition should be set aside exclusively for small business concerns. On September 11, 1987, the contracting officer sent a letter to all prospective offerors informing them of the reclassification of the RFP as a 100 percent set-aside for small business. The third amendment, issued on October 9, 1987, established a new due date of November 3, 1987, for receipt of offers. This amendment also changed the solicitation to a 100 percent set-aside for small businesses and incorporated the revised UPB.

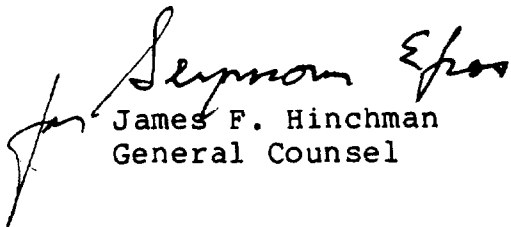
The protester's major contention is that the set-aside was based on a universal policy decision rather than a determination that this particular procurement falls within the ambit of the Federal Acquisition Regulation, 48 C.F.R. § 19.502-2 (1986). However, that regulation generally requires an acquisition to be set aside for exclusive small business participation when the contracting officer determines that there is a reasonable expectation that offers will be submitted from at least two responsible small business concerns offering the products of small businesses and that awards will be made at reasonable prices. In this regard, the decision to set aside a procurement is basically a business judgment within the broad discretion of the contracting officer which this Office will not question unless a clear showing is made that the agency abused its discretion. Burrelle's Press Clipping Service, B-199945, Mar. 2, 1981, 81-1 C.P.D. ¶ 152.

Although the protester alleges an abuse of discretion by the agency, we have no basis to question the Air Force's decision to set aside the procurement. The record indicates that while the Air Force initially believed an unrestricted procurement was proper, the agency decided to restrict the RFP when it found substantial interest in the procurement from responsible small businesses. Once the contracting officer determined that there was a reasonable expectation that bids from at least two responsible small business concerns would be received and that awards could be made at reasonable prices, he was, as noted above, required to set aside the procurement. FAR, 48 C.F.R. § 19.502-2.

Finally, B&R requests recovery of bid and proposal preparation costs incurred prior to the procurement's being changed

Finally, B&R requests recovery of bid and proposal preparation costs incurred prior to the procurement's being changed from unrestricted to an exclusive small business set-aside. Since an agency may restrict the solicitation to small business participation after initially issuing an unrestricted solicitation, Waste Management, Inc., B-225403.4, Jan. 30, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-1 C.P.D. ¶ 103, and since we find that the agency had a reasonable basis for doing so here, there is no basis for allowing recovery of these costs. Recovery of such costs is allowed only where the protest is found to have merit. Technology Incorporated, B-223999, Nov. 4, 1986, 86-2 C.P.D. ¶ 517.

The protest and the claim for costs is denied.

  
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General Counsel