



The Comptroller General  
of the United States

Washington, D.C. 20548

Cooper

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## Decision

Matter of: A&C Building and Industrial Maintenance Corp.

File: B-230839

Date: July 21, 1988

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### DIGEST

1. Agency is not required to purchase individual building services separately where the agency's overall needs can be most effectively provided through a consolidated procurement approach involving award to one contractor of the total requirement for services necessary to operate and maintain the building.
2. General Accounting Office did not violate Small Business Administration regulations by deciding not to set aside a procurement for small business where there was reason to expect offers from at least two responsible business concerns.
3. Protest that the agency deprived protester of opportunity to compete because the agency did not provide it with a copy of the solicitation is denied where the record shows that although the agency did not prepare a solicitation mailing list, otherwise reasonable efforts were made to publicize and distribute the solicitation; the protester in fact secured a copy before proposals were due; and three proposals were received.
4. Protest that notice in the Commerce Business Daily was misclassified is denied where the record shows that the procurement, a consolidated management contract, was correctly classified under the section for services to operate and maintain a government facility.
5. The General Accounting Office does not consider the accuracy of the Department of Labor wage determinations issued in connection with solicitations subject to the Service Contract Act.

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6. Whether an agency may fail to meet a target award date due to the unavailability of funds is a matter of procedure and does not invalidate a procurement or provide a basis for protest.

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## DECISION

A&C Building and Industrial Maintenance Corp. protests the issuance of request for proposals (RFP) No. OAM-88-N-0002 by the General Accounting Office (GAO) for management, operation, maintenance and engineering services for the GAO building in Washington, D.C. A&C principally argues that GAO's decision to use a consolidated management contract, instead of separate contracts, discriminates against small businesses and violates the spirit of the Small Business Administration's (SBA) regulations concerning small business set-asides, and that the GAO discriminated against A&C, an incumbent General Services Administration (GSA) contractor, by not sending it a copy of the solicitation. We deny the protest.

The solicitation was issued as a result of a memorandum of agreement (MOA) between GSA and GAO providing for the transfer of custody and control of the GAO building from GSA to GAO on October 1, 1988, subject to approval by the Office of Management and Budget and the Congress. Under the MOA, GAO will initiate action for the legislation necessary for the transfer of responsibility for the building, and solicit and award a commercial facilities management (CFM) contract to operate the GAO building effective October 1. No funding is to be transferred with the building. A&C, a small business, is the incumbent contractor under GSA contract No. GS11P-87-MJC-0043 for janitorial services at the GAO building. The contract, issued July 1, 1987, is for a 1 year term with four 1 year option periods.

The RFP, issued January 22, 1988, covers 15 services that would require separate procurements if not consolidated: facilities management, operation and maintenance of mechanical and building equipment, architectural and structural maintenance, security, janitorial services, pest control, landscaping and grounds maintenance, trash removal, elevator and escalator maintenance, water treatment, tropical plant maintenance, snow removal, construction management and energy management. Optional services cited in the solicitation include mail management, courier and light freight services, moving services, typewriter maintenance, furniture repair, supply store services and building alterations.

The procurement was synopsized in the Commerce Business Daily (CBD) on November 24, 1987, under the "Services" subsection entitled "Operation and/or Maintenance of Government Owned Facility." GAO did not itself generate a list of bidders to whom the solicitation was to be sent; the "Bidders Mailing List" included the 78 firms that requested copies of the solicitation in response to the CBD notice. GAO received three offers by the March 25 closing date for receipt of proposals.

A&C first argues that GAO's decision to issue a solicitation for a CFM contract instead of conducting separate procurements discriminates against small businesses. A&C further argues that, in any case, the CFM procurement should be a small business set-aside.

In response, GAO defends its decision to solicit one experienced firm to manage the GAO building, consolidating responsibility for all services currently being performed by GSA and its contractors. GAO argues that the CFM contract will provide the experience GAO lacks in contracting on the scale necessary to operate a building the size of the GAO building; will centralize administration and coordination of the contract; and will unify responsibility for deficiencies in performance. GAO also asserts that the consolidated contract will result in lower administrative costs, avoid management duplication, and improve the operation of the building by giving one contractor sole responsibility for meeting the agency's needs. GAO estimates that issuing separate contracts would necessitate hiring additional contract specialists and monitoring personnel, as well as full-time experts that might not be required full-time in each specific service area.

The Competition in Contracting Act of 1984 (CICA) generally requires that a solicitation include specifications which permit full and open competition, 41 U.S.C. § 253(a) (Supp. IV 1986), and include restrictive conditions only to the extent necessary to satisfy the needs of the agency. 41 U.S.C. § 253a(a)(2)(B). See The Caption Center, B-220659, Feb. 19, 1986, 86-1 CPD ¶ 174. Since procurements on a total package or consolidated basis can restrict competition, we have objected to such procurements where the approach did not appear necessary to satisfy the agency's minimum needs. See, e.g., Systems, Terminals & Communications Corp., B-218170, May 21, 1985, 85-1 ¶ 578. On the other hand, we have recognized that the possibility of obtaining economies of scale or avoiding unnecessary duplications of costs may justify such an approach. The Caption Center, B-220659, *supra*. The decision whether to procure by means of a total package or consolidated approach, or to break out divisible portions of the total

requirement for separate procurements, is a matter generally within the discretion of the contracting agency, and we will not disturb the exercise of that discretion absent a showing that the agency's determination lacks a reasonable basis. Servicemaster All Cleaning Services, Inc., B-223355, Aug. 22, 1986, 86-2 CPD ¶ 216.

We find that GAO's decision to procure by means of a CFM approach has a rational basis. We see nothing improper in the determination that the use of a consolidated contract is needed not only to reduce administrative costs and duplicative managerial time, but to improve operation of the building by unifying responsibility for myriad services, and to provide the experience GAO lacks in large building management. We note, in addition, that GAO reports that three offers have been submitted in response to the solicitation, so that it appears that adequate competition has resulted from GAO's consolidation of the building services contracts. See Kahr Bearing, B-228550.2 et al., Feb. 25, 1988, 88-1 CPD ¶ 192. In sum, A&C has offered no evidence to suggest that the CFM contract approach represents an undue restriction on competition.

Moreover, we find that GAO did not violate SBA regulations concerning small business set-asides in not designating this contract as such a set-aside<sup>1/</sup>.

As a general rule, the decision whether to set aside a procurement for small business is within the discretion of the contracting officer. International Technology Corp., B-222792, June 11, 1986, 86-1 CPD ¶ 544. The Federal Acquisition Regulation (FAR) provides that the entire amount of an acquisition shall be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that offers will be received from at least two responsible small business concerns and that award will be made at a reasonable price. FAR § 19.502-2 (FAC 84-31). We will not object to a determination not to set aside a procurement for small business where the record shows that the evidence before the contracting officer was not adequate to support the conclusion that small business competition reasonably could be expected. In this regard, procurements have been reserved for small business concerns where the set-aside determinations were based on such factors as prior procurement

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<sup>1/</sup> GAO is not covered by the Small Business Act and SBA regulations, 15 U.S.C. § 632(b) (1982), although we note this procurement was conducted based on an agreement with GSA, which is subject to them. In any event, GAO's actions complied with set-aside requirements, as discussed.

history, Anchor Continental, Inc., 65 Comp. Gen. 270 (1986), 86-1 CPD ¶ 137; market surveys, Consolidated Micrographics, Inc., B-222229, Apr. 29, 1986, 86-1 CPD ¶ 415; or advice from the agency's small business specialists and technical personnel, Mantech International Corp., B-216505, Feb. 11, 1985, 85-1 CPD ¶ 176.

In this case, we find that there was no evidence before the contracting officer to support a decision to set this procurement aside for small business. Obviously, there was no prior procurement history for this CFM contract. As noted above, A&C provided services that were limited in scope and represented only a fraction of the total requirement; in view of the magnitude of the current requirement in terms of scope, and the nature of the services to be provided, A&C's set-aside contract clearly cannot be viewed as the contemplated procurement history. See Support Management Services, Inc., B-229583, Mar. 17, 1988, 88-1 CPD ¶ 277. Moreover, there otherwise was no indication on record to establish that any small business concern was interested in competing for the GAO building contract.

A&C next argues that GAO's failure to send the solicitation to the incumbent GSA contractors providing services in the GAO building constitutes discrimination against those contractors, and that the CBD notice of the procurement was misclassified in that it should have appeared in the CBD section for housekeeping services. GAO responds that it did not compile a solicitation mailing list; instead it synopsisized the procurement in the CBD, properly classified under the section for services to operate and maintain a government facility, rather than the housekeeping services section, since the contract involved many services other than janitorial services. GAO then sent solicitations to all 78 firms that responded to the CBD notice, and maintains that it obtained full and open competition in that it received 3 offers. (GAO has not yet completed evaluation of those offers.) GAO asserts, moreover, that A&C is not capable of managing and operating a building on the scale of the GAO building and therefore would not have been placed on a mailing list if one had existed.

An agency meets CICA's requirement for full and open competition when it makes a diligent, good faith effort to comply with the statutory and regulatory requirements regarding notice of the procurement and distribution of solicitation materials, and obtains a reasonable price. Rut's Moving & Delivery Service Inc., B-228406, Feb. 11, 1988, 67 Comp. Gen. \_\_\_, 88-1 CPD ¶ 139. Whether an

agency's efforts in this regard are sufficient in light of the applicable statutory and regulatory requirements depends upon the facts and circumstances of each case.

We find that GAO properly synopsisized this procurement in the CBD since the contract is not just for housekeeping services. Also, accepting A&C's assertion that it could have competed as a potential prime contractor, we point out that by virtue of a CBD notice, companies are on constructive notice of the solicitation and its contents and have a duty to make reasonable efforts to obtain copies of the RFP in order to ensure that they are included in the competition, if appropriate. G&L Oxygen and Medical Supply Services, B-220368, Jan. 23, 1986, 86-1 CPD ¶ 78. In any case, A&C had actual notice of the procurement as of March 18 and received a copy of the solicitation on March 21, before the closing date for receipt of proposals.

Furthermore, we note that although GAO did not compile a mailing list for the contract, GAO did receive 78 requests for the solicitation that resulted in three offers, which we think is sufficient to satisfy the full and open competition requirement in these circumstances. Rut's Moving & Delivery Services, Inc., B-228406, supra.

A&C further argues that the RFP contains an erroneous Department of Labor (DOL) wage determination for janitorial services. We do not however, review the accuracy of a DOL wage determination as part of our bid protest function. Grace Industries, Inc., B-224325, Nov. 13, 1986, 86-2 CPD ¶ 558. In any event, the record shows that GAO admits that the challenged wage determination is defective and has asked DOL for a corrected one.

A&C's last arguments concern the fact that GAO has not yet received an appropriation to fund the procurement. A&C argues that because of the funding uncertainty, the base year services for the GAO procurement are difficult to price since the contract might not begin on October 1, 1988, as stated in the solicitation. In addition, A&C asserts that the 1 year option may be exercised by GSA on its janitorial contract, exposing the government to termination for convenience costs on A&C's contract when the GAO contract does begin.

Whether an agency fails to meet a target date for award due to the unavailability of funds is a matter of procedure and does not invalidate a procurement or provide a basis for protest. Cedar Valley Corp., B-225475 et al., Feb. 24, 1987, 87-1 CPD ¶ 211. Accordingly, A&C's allegation concerning the difficulty of pricing base-year services for

the GAO procurement is not a protestable issue. In addition, whatever the consequences might be if GSA chooses to exercise its 1 year option in A&C's janitorial contract, they clearly are not a proper matter for protest by A&C.

The protest is denied.



James F. Hinchman  
General Counsel