



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: SEAVAC International, Inc.--Reconsideration
File: B-231457.2
Date: November 29, 1988

DIGEST

Decision to withdraw small business set-aside was reasonable where it was based on the agency's experience in prior procurement and with firms that responded to agency's size inquiry.

DECISION

SEAVAC International, Inc., requests reconsideration of our decision in SEAVAC International, Inc., B-231016 et al., Aug. 11, 1988, 88-2 CPD ¶ 134, in which we denied SEAVAC's protest of the Department of the Navy's determination to withdraw the small business set-aside under request for proposals No. N00024-88-R-4010(Q).^{1/} We affirm our prior decision.

The Navy issued the RFP on October 7, 1987, as a small business set-aside for the replacement of an expiring contract for worldwide ship hull cleaning services. The prior contract was awarded in 1984, after a competitive procurement restricted to small businesses of less than 500 employees. As originally issued, the current RFP used the same size standard.

The RFP provided for the services to be furnished worldwide in what are called east and west coast zones, covering most of the major waters of the world. The east coast zone, for instance, covers the Gulf of Mexico, Atlantic ports on both sides of the ocean, and Mediterranean and Red Sea ports.

^{1/} We also denied SEAVAC's protest of a recent extension of the incumbent's contract, and we dismissed the firm's protest of prior extensions. SEAVAC does not ask for reconsideration of those holdings.

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The RFP contemplated cleaning approximately 300 vessels per year in each zone; the Navy estimated, based on the existing contract, that each zone would generate about \$5 million per year in revenue. The closing date for the receipt of proposals was December 7, 1987.

In November of 1987, prior to the closing date, SEAVAC filed an appeal with the Small Business Administration's Office of Hearings and Appeals (SBA/OHA) in which SEAVAC challenged the size standard employed in the RFP. On January 22, 1988, SBA/OHA determined that the appropriate size standard was \$3.5 million average annual receipts (AAR) over the last 3 years. In amendment 5 to the RFP, dated March 29, the Navy withdrew the small business set-aside because the Navy did not expect adequate small business competition under the \$3.5 million AAR size standard.

SEAVAC challenged the Navy's withdrawal of the set-aside. We held that the withdrawal was reasonable, however, based on three principal factors: (1) the Navy's experience in the prior procurement, in which only one offeror would have satisfied the more stringent \$3.5 million AAR size standard; (2) the withdrawal of the set-aside was approved by the Navy's SBA representative, and (3) the Navy's "survey" of the 32 small business respondents to a size inquiry the Navy sent to firms on its bidders list showed few small businesses with the likely capability of performing the needed services.

SEAVAC argues that our decision was unfair because the firm now understands that the "survey" to which we referred in our decision--a Navy summary of commercial reports on respondents to the agency's size inquiry--as supporting the determination to withdraw the set-aside actually was prepared after the determination to withdraw was made. SEAVAC contends that without the "survey," the 32 small business responses to the Navy's size inquiry were the only information properly for consideration by the contracting officer. SEAVAC argues that the contracting officer could not reasonably conclude on the basis of this information that there was no reasonable expectation of competition by at least two small businesses. We find no merit in SEAVAC's argument.

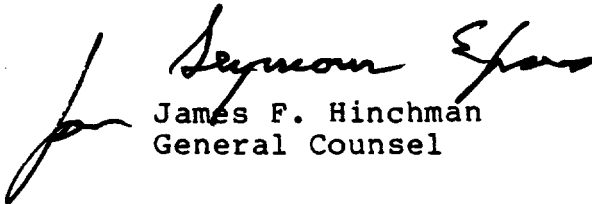
SEAVAC is correct about when the commercial report summary we thought was the "survey" that purported to support the Navy's action was prepared; after our decision was issued, the Navy apprised our Office informally of the preparation date, and that the survey to which the agency meant to refer was an informal discussion among Navy personnel based on their experience with firms in the industry.

Nevertheless, in requesting reconsideration SEAVAC ignores the fact that the contracting officer had other information before him that we considered persuasive. First, as we noted in our decision, the responses to the Navy's size inquiry, sent to all firms on the bidders list, were not expressions of interest in the procurement and lacked the significance which SEAVAC attempts to attribute to them. The Navy included firms on the bidders list, with as few as two employees and others in unrelated marine businesses unlikely to be capable of performing the needed services, and the agency's letter was an inquiry into size status, not interest in the procurement. Second, the withdrawal of the set-aside was approved by the Navy's SBA representative. Third, the prior procurement indicated that few, if any, small businesses satisfying the \$3.5 million AAR standard might compete.

Moreover, as the Navy now advises, its experience and familiarity with the firms in boat and hull cleaning and other businesses that responded to the Navy's size inquiry indicated little likelihood of competition by firms meeting the \$3.5 million AAR standard with the capability and capacity to perform the needed services. The later-prepared commercial summary does nothing more than confirm the Navy's "survey" at the time of the determination. In short, we remain convinced that the contracting officer had a reasonable basis for withdrawing the set-aside.

Finally, SEAVAC complains that it was not provided with a copy of the Navy's commercial reports summary over the Navy's objections to its release. Since the summary was not used in the Navy's decision to withdraw the set-aside and, therefore, was not germane to the decision, we see no useful purpose to be served in pursuing the matter at this time.

We affirm our prior decision.



James F. Hinchman
General Counsel