



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hannibal Construction, Inc.

File: B-237677

Date: February 16, 1990

Charles J. Harding, for the protester.
Lieutenant Colonel Howard G. Curtis, Office of the Judge Advocate General, Department of the Army, for the agency.
Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In an emerging small business set-aside, under small purchase procedures, agency's failure to solicit protester does not constitute an adequate reason to cancel and reissue the solicitation where the protester was not deliberately excluded from the competition, adequate competition was obtained, and the apparent low offer is reasonably priced.

DECISION

Hannibal Construction, Inc., protests award of a contract under request for proposals (RFP) No. DABT10-90-R-0018, issued by the Army at Fort Benning, Georgia. Hannibal contends that since it was left off the bidder's list, the Army should cancel and reissue the RFP to allow Hannibal an opportunity to submit an offer.

We deny the protest.

The RFP, issued as an emerging small business set-aside, was for furnishing all labor, equipment, and materials to replace wooden doors and jambs with steel doors and jambs in three buildings at Fort Benning. Due to its expectation that the magnitude of the project would be less than \$25,000, the agency used small purchase procedures. See Federal Acquisition Regulation (FAR) § 13.104 (1984). In publicizing the procurement, the Army states that it mailed copies of the RFP to 22 of 107 firms on a bidders list. The contracting officer selected the 22 firms on the basis of their location within a 100-mile radius of Fort Benning; their expression of interest in small projects; or their

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history of making offers on small projects coupled with a satisfactory performance record. Hannibal, a recent addition to the list, was outside the 100-mile radius, had no work history at Fort Benning, and had not expressed any interest in small projects, and thus was not solicited. Three additional firms requested and received copies of the RFP after seeing a notice of the solicitation placed on the publicly accessible bulletin board outside the Directorate of Contracting office. Seven firms responded to the solicitation, all with offers below \$25,000.

Hannibal contends that the selection of firms to be sent the solicitation was not fair and equitable and that the solicitation should be canceled and reissued to allow all interested parties the opportunity to participate. We disagree.

The small purchase procedures are excepted from the requirement set forth in the Competition in Contracting Act of 1984 (CICA) that agencies obtain full and open competition through the use of competitive procedures when conducting procurements. 10 U.S.C. § 2304(g)(1) (1988). These simplified procedures are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, and agencies need only obtain competition to the maximum extent practicable when they utilize these procedures. 10 U.S.C. § 2304(g)(4). In implementing the statutory requirement, the FAR requires contracting officers, using small purchase procedures for purchases of more than \$1,000, to solicit quotations from a reasonable number of qualified sources to ensure that the purchase is advantageous to the government, price and other factors considered. FAR § 13.106(b)(1) (FAC 84-26); S.C. Servs. Inc., B-221012, Mar. 18, 1986, 86-1 CPD ¶ 266. Generally, solicitation of three suppliers is sufficient. FAR § 13.106(b)(5); see Ommi Elevator, B-233450.2, Mar. 7, 1989, 89-1 CPD ¶ 248.

Here, the agency solicited 22 firms by mail and an additional 3 firms obtained the solicitation after seeing the bulletin board announcement, resulting in offers from 7 firms. We find that the 100-mile radius/prior history criteria used by the contracting officer was both fair and equitable under the circumstances.^{1/} Further, even though

^{1/} Protester claims that 6 of the 22 firms are outside the 100 mile limit. However, of the six listed by protester, we find only two to be outside the area. In this regard, the agency explained that some firms were solicited from outside

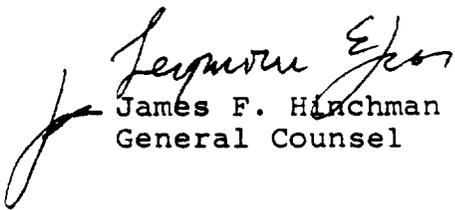
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the apparent low price is above the government estimate, it is still below the \$25,000 small purchase ceiling and there is no evidence that the price is unreasonable. Thus, the Army's failure to solicit Hannibal is not in itself a violation of the requirement to promote competition in small purchases. S.C. Servs. Inc., B-221012, supra. Cancellation and reissue of the solicitation here would only be warranted where there is a showing that the agency made a deliberate or conscious attempt to preclude the protester from competing. See Omni Elevator, B-233450.2, supra. No such showing has been made here.

Hannibal also states that it has only received one of the fiscal year 1990 solicitations issued by the Directorate of Contracting at Fort Benning, and requests our Office to review those solicitation notices. We do not ordinarily conduct such investigations of contracting activities under our bid protest function. See Summerville Ambulance, Inc., B-217049, July 1, 1985, 85-2 CPD ¶ 4. In any event, Hannibal's generalized complaint of non-notice would appear to be untimely, since apparently it is not filed within 10 days of when it knew or should have known of its protest basis. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1989).

Finally, protester observes that there is no evidence that any of the solicited firms meets the small business size requirements of the solicitation. Inasmuch as challenges of the size status of particular firms are for review solely by the Small Business Administration, 15 U.S.C. § 637(b)(6) (1988), we will not consider this issue. 4 C.F.R. § 21.3(m)(2).

Accordingly, the protest is denied.


James F. Hinchman
General Counsel

1/(...continued)

the area based on prior history and an expressed interest. Even to the extent the contracting officer miscalculated the geographical radius, our conclusion remains unchanged that he used a reasonable method to obtain competition.