



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: La Quinta Roofing, Inc.

File: B-239795.2

Date: October 12, 1990

Michael M. Josephson for the protester.
Paul Fisher, Esq., Department of the Navy, for the agency.
Jeanne White Isrin, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Failure of two lower bidders to satisfy small business size standard referenced in the solicitation was not a basis for rejecting those bids where neither the solicitation nor the Commerce Business Daily synopsis contained language indicating that the procurement was set aside for small businesses, and the agency never intended a set-aside.

DECISION

La Quinta Roofing, Inc. protests the award of a contract to any other bidder under invitation for bids (IFB) No. N68711-89-B-3829, issued by the Department of the Navy for the reroofing of building 65 at the Naval Aviation Depot, Naval Air Station North Island, San Diego, California.

We deny the protest.

The solicitation was issued on April 16, 1990, under the Small Business Competitiveness Demonstration Program.^{1/} Both the Commerce Business Daily (CBD) announcement and the solicitation identified the procurement by Standard Industrial Classification (SIC) code no. 1761, for roofing and sheet metal work, and contained the size standard the Small Business

^{1/} The Program was established by Title VII of the Business Opportunity Development Reform Act of 1988, Pub. L. No. 100-656, 102 Stat. 3889, 3892 and implemented by Federal Acquisition Regulation (FAR) subpart 19.10 and procedures set forth at 53 Fed. Reg. 52889. For the Department of Defense, the program is also governed by Defense Federal Acquisition Regulation Supplement (DFARS) subpart 219.10.

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Administration (SBA) had established for that industry, i.e., \$7 million. The solicitation also included FAR § 52.219-1, requiring bidders to certify whether or not they were small business concerns, and DFARS § 252.219-7012, requiring small business bidders to provide data as to their size (number of employees and total revenues).

La Quinta, the third low bidder, protests award to either of the two lower bidders on the ground that they are not small businesses. La Quinta argues that the procurement clearly was restricted to firms that meet the \$7 million size standard stated in both the CBD announcement and the solicitation.

We disagree. First, the procurement was not a small business set-aside. Neither the CBD announcement nor the solicitation included any language restricting the procurement to small businesses. Specifically, the solicitation did not include FAR § 52.219-6, Notice of Total Small Business Set-Aside, the standard provision which serves to set procurements aside for small businesses. See Clean America, Inc., B-237341, Feb. 9, 1990, 90-1 CPD ¶ 171 (the fact that the procurement was not restricted in the CBD announcement and that the solicitation did not include FAR § 52.219-9 indicated that no set-aside was intended) and Techno-Sciences, Inc., B-238270, Apr. 24, 1990, 90-1 CPD ¶ 415 (lack of restriction in the solicitation and absence of FAR § 52.219-6 indicated no intention to set aside). The inclusion of a small business size standard or other clauses calling for small business information in the solicitation is not indicative of a set-aside; these provisions are included in unrestricted procurements solely to enable agencies to monitor small business participation as required under the Program.^{2/} See Clean America, Inc., B-237341, supra.

Where a procurement is not set aside for small business, the procurement cannot be restricted to firms meeting a small business size standard included in the solicitation. Techno-Sciences, Inc., B-238270, supra. Accordingly, there was no basis for the agency to disqualify either of the two lower bidders.

^{2/} The Program requires that each agency monitor its small business participation on a quarterly basis and submit a written report to the Office of Federal Procurement Policy (OFPP) and the SBA. 53 Fed. Reg. 52893.

La Quinta also protests the agency's failure to forward its protest against the low bidders' size status to the SBA. See FAR § 19.302(c)(1). As the procurement was not set aside for small businesses, however, the firms' size status is irrelevant here.

The protest is denied.

for Robert P. Murphy
James F. Hinchman
General Counsel