S. Riback

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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Young-Robinson Associates, Inc.

File: B-242229

Date: March 22, 1991

Theresa L. Watson, Esq., for the protester.
Steve Westerlund, for Aquasis Services, Inc., R.W. Sutliff for Tri-Services, Inc., Floyd Bone for N.R.F. Enterprises, Inc., and Paul Opalack for Noblestar Systems Corp., interested parties.
John A. Dodds, Esq., Department of the Air Force, for the agency.
Scott H. Riback, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly failed to exercise a contract option for a particular requirement and instead issued a new solicitation is dismissed since it involves a matter of contract administration and is not for consideration under the bid protest regulations.

2. Agency properly issued solicitation as a small business set-aside rather than setting aside the requirement for small disadvantaged businesses or for award under the Small Business Administration's section 8(a) program where the requirement is not a new one and was previously acquired under a small business set-aside.

DECISION

Young-Robinson Associates, Inc. (YRA), a small disadvantaged business (SDB), protests the terms of request for proposals (RFP) No. FO1600-90-R-0032, issued by the Department of the Air Force for warehouse operation services for the agency's Extension Course Institute (ECI). YRA argues that the Air Force improperly failed to exercise a 1-year option for the services under a contract which had previously been awarded to YRA. YRA also argues that the agency improperly issued the RFP as a small business set-aside.

We dismiss the protest in part and deny it in part.

In 1987, the agency conducted a small business set-aside acquisition for the subject services, and YRA received award of a 1-year base contract with three 1-year options.1/ During the performance of that contract, the agency in 1988 initiated construction of a new facility for its ECI warehouse operations which was completed in 1990. Operations at the new facility are to be conducted with an upgraded mechanized material handling system as well as a different inventory control system, and the Air Force decided to conduct a new competition for the services at the facility.

The current RFP was issued as a total small business set-aside. Subsequent to its issuance, YRA corresponded with both the Air Force and the Small Business Administration (SBA) in an effort to have the agency exercise the outstanding option for the services or, failing that, to have the acquisition set aside for SDBs or awarded to it pursuant to section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988). The Air Force declined to modify the RFP, and the SBA declined to accept the requirement for participation in the 8(a) program. This protest followed.

YRA first argues that the Air Force erred in failing to exercise its option for 1991 under its existing contract. According to the protester, the agency is required by "congressional policy" to exercise its option since the firm is an SDB and Congress has declared a policy of increasing the award of contracts to SDBs.

The Congress has established for the Department of Defense (DOD) a goal of awarding to SDBs 5 percent of the dollar value of the contracts awarded. See 10 U.S.C. § 2301 note (1988). That does not require the exercise of a particular contract option, however. An agency's decision not to exercise an option is a matter of contract administration, within the discretion of the agency, and therefore is not a matter for consideration under our Bid Protest Regulations. 4 C.F.R. § 21.3(m)(1) (1990); United Coupon Clearing House, B-241204, Sept. 21, 1990, 90-2 CPD ¶ 250. We therefore dismiss this basis of YRA's protest.

YRA next argues that the agency erred in failing to consider award of this requirement to the firm under the SBA's 8(a) program. According to YRA, the requirements are of such an expanded scope such that this is a "new" acquisition which, under Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 219.803(c) (DAC 88-14), must first be considered for award under the 8(a) program. In addition, the

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1/ The services in question have been acquired under small business set-asides since 1982.

protester argues that, even if an 8(a) award is not made, the Air Force was still obliged to set aside the acquisition exclusively for SDBs. In support of its position, YRA directs our attention to DFARS § 219.502-72(a) (DAC 88-13), which requires Defense agencies to set aside an acquisition for exclusive SDB participation where certain specified circumstances exist.

DFARS § 219.801 states that DOD, to the greatest extent possible, will award contracts under the authority of section 8(a) of the Act and will actively identify requirements to support the business plans of 8(a) firms. DFARS § 219.803(c) states that requirements initially will be reviewed for suitability for inclusion in the 8(a) program. The DFARS, however, does not require that any particular requirement be accepted for award under the 8(a) program. Under section 8(a) of the Act and the implementing regulations, the SBA and contracting agencies have broad discretion to determine whether to place a requirement under the 8(a) program. Here, the agency did not find this requirement suitable for award under the 8(a) program, and the Assistant District Director for Minority Small Business and Capital Ownership Development for the SBA concurred in the agency's position. In view of the discretion afforded the SBA and the agency in this area, we have no basis to legally object to this decision.

Regarding the agency's failure to set aside the acquisition under the SDB program, DFARS § 219.502-72(b)(1) (DAC 88-13) provides that an SDB set-aside shall not be conducted where the product or service has previously been acquired on the basis of a small business set-aside. Here, we think the agency is purchasing essentially the same services as it previously contracted for under a small business set-aside, warehouse operation services, even though the awardee will be performing this work using a new mechanized handling and automated inventory system. The RFP's scope of work remains essentially the same as it was under YRA's predecessor contract, except that the awardee under the current RFP will be required to perform both the move from the old to the new facility and the overall transition between the old and new material handling and inventory systems. The protester, other than quoting the agency's statements regarding the revised method of accomplishing the handling and inventory control tasks in the current RFP, has failed to show that the two requirements are distinguishable in terms of the basic work required. In fact, YRA previously argued to the SBA, in support of its assertion that the Air Force should exercise the option on the prior contract, that there was "no material

change in the mission [and] performance work statement, i.e., the scope of work." Since the previous and current requirements are basically the same and since the services were previously acquired under a small business set-aside, the requirement cannot, under the DFARS provision, be set aside for SDB firms.

The protest is denied in part and dismissed in part.2/

for James F. Hinchman
General Counsel

2/ YRA also argues that, if we conclude that the acquisition should not be reserved under either the 8(a) or SDB programs, the RFP should be issued on an unrestricted basis. We reject this argument. DFARS § 219.501(g)(DAC 68-15) requires that a requirement be repetitively set aside if it has been previously acquired successfully under a small business set-aside unless particular circumstances exist. The protester has neither alleged nor demonstrated that the required circumstances exist in this case which would warrant dissolution of the set-aside.