



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: RAI  
File: B-244567  
Date: July 1, 1991

David R. Van Metre for the protester.  
Catherine M. Evans, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Where protest allegations do not establish likelihood that agency's decision was contrary to applicable regulations, protest of decision not to set aside procurement for exclusive participation by small business concerns is dismissed for failure to set forth a legally sufficient basis of protest as required by General Accounting Office Bid Protest Regulations.

### DECISION

PAI, a small business, protests the Peace Corps decision to issue request for proposals (RFP) No. PC 91-11 on an unrestricted basis rather than as a small business set-aside.

We dismiss the protest.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4) (1991), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Professional Medical Prods., Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2. The decision whether to set aside a procurement for small business is a judgment within the discretion of the contracting agency which we will not disturb unless there has been a clear showing of an abuse of that discretion. See Alamo Acoustical Restoration Co., B-228429.2, Feb. 16, 1988, 88-1 CPD ¶ 150. Thus, where a protester contends that an agency improperly failed to set a procurement aside for small business concerns, in order to meet our standard for specificity the protester must allege facts sufficient to establish

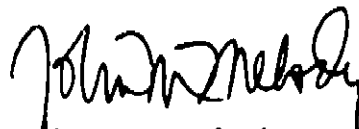
the likelihood that the agency's decision amounted to an abuse of discretion. See Young-Robinson Assocs., Inc., B-242868, Feb. 12, 1991, 91-1 CPD ¶ 160.

The Federal Acquisition Regulation (FAR) provides that a procurement shall be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns, and (2) award will be made at a fair market price. FAR § 19.502-2. RAI does not allege that the contracting agency's failure to make such a determination was unreasonable, that there is more than one small business concern that can provide the required services, or that any potential small business offerors could be expected to bid fair market prices.

The protester does point to a telephone conversation, during which the agency allegedly "offered no explanation as to why this solicitation was not set aside," as evidence that the agency took no steps to maximize small business competition, as required under § 19.202-2. However, the fact that the agency did not discuss its actions with the protester in a conversation the protester does not describe in no way evidences a failure to take required actions.

We conclude that RAI has failed to raise arguments necessary to establish a likelihood that the agency's decision not to set the procurement aside was improper under the above standard. See Young-Robinson Assocs., Inc., B-242868, supra.

The protest is dismissed.



John M. Melody  
Assistant General Counsel