

K. Riback
148372



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Able Service Contractors, Inc.

File: B-250182

Date: January 5, 1993

B. Erdman for the protester.
Demetria T. Carter, Esq., and Geoffrey Chun, Esq.,
Department of the Navy, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Contracting agency's inadvertent check mark next to the
statement, "THIS PROCUREMENT IS UNRESTRICTED," on
solicitation cover sheet does not require that the
procurement be considered unrestricted where the
solicitation includes provisions which clearly provide that
the procurement is intended to be a small business
set-aside.

DECISION

Able Service Contractors, Inc., a large business, protests
the agency's decision to disqualify it due to its size
status under request for proposals (RFP) No. N00600-92-R-
1855, issued by the Department of the Navy for patient
transportation services. Able contends that its
disqualification is improper in light of the check mark next
to the designation, "THIS PROCUREMENT IS UNRESTRICTED," on
the solicitation cover sheet.

We deny the protest.

On February 12, 1992, the Navy published a notice of the
procurement in the Commerce Business Daily (CBD), which
stated that the requirement was a total small disadvantaged
business set-aside. The solicitation was issued on May 13,
and on the cover sheet, it contained a check mark next to
the statement, "THIS PROCUREMENT IS UNRESTRICTED." However,
in addition to a number of clauses which require offerors to
certify to their size status, the solicitation also included
Federal Acquisition Regulation (FAR) § 52.219-6 entitled
"Notice of Total Small Business Set-Aside," which states
that offers are solicited only from small businesses, that

any award will be made to a small business, and that offers from non-small business concerns will be rejected. The solicitation also contained a clause entitled "Notice of Applicable Small Business Size Standards; Set-Aside," which stated that "this procurement is set-aside for small business," provided that the firm's average annual receipts shall not exceed \$3.5 million, and designated a Standard Industrial Classification (SIC) Code of 4729 for the solicited services.

Upon receiving the solicitation, Able contacted the agency concerning whether or not the solicitation was unrestricted. According to Able, it was informed by an agency official that "an amendment would be forthcoming if required."¹ On May 13, the agency issued amendment 2 which changed the applicable SIC code and stated that the "small business size standard is 3.5 million." The agency received four proposals by the initial proposal due date, including one from Able in which it acknowledged amendment 2 and certified in its proposal that it was a large business. On September 1, the contracting officer contacted Able regarding its size status certification. Able confirmed that it now falls in the \$8 million size standard, and the contracting officer advised Able that this procurement was a 100% small business set-aside and that Able did not fall within the applicable \$3.5 million size standard. On September 2, Able protested its disqualification to our Office.

The agency states that the "unrestricted" check mark on the cover sheet is a typographical error. The agency contends that a reasonable reading of the solicitation as a whole requires the conclusion that this procurement was solicited as a total small business set-aside. The agency also points out that the protester should have known that this solicitation was set aside for small business because Able has been providing these services under total small business set-asides for 5 years.

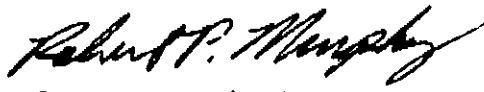
The cover sheet notation was clearly erroneous in light of the fact that no other RFP provision, agency notice, correspondence, or action suggests that this procurement is unrestricted. See Northwest Piping, Inc., B-239404, Aug. 16, 1990, 90-2 CPD ¶ 133. On the contrary, as noted above, the solicitation included the "Notice of Total Small Business Set-Aside" provision set forth in FAR § 52.219-6, which is required by FAR § 19.508(c) when a solicitation is set aside for small business concerns, and serves as the

¹Able is currently supplying these services under a small business set-aside contract. Able was a small business at the time of award of that contract.

standard notice to offerors of the set-aside status of the procurement.

As discussed above, when Able contacted the agency by telephone concerning whether or not this solicitation was set-aside for small businesses, it was informed that "an amendment would be forthcoming if required," Amendment 2, subsequently issued by the agency, stated that the small business size standard is \$3.5 million. Under the circumstances, the amendment clearly gave the protester notice that the solicitation was set aside for small businesses. If Able disagreed with the decision of the agency to set this procurement aside for small businesses, to be timely, it was required to file a protest before the closing time for receipt of proposals. 4 C.F.R. § 21.2 (a) (1) (1992).

The protest is denied.


for James F. Hinchman
General Counsel