



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: State Management Services, Inc.

File: B-252312

Date: June 21, 1993

Kelsey Lewis for the protester.
Kathy G. Teller, Esq., General Services Administration, for
the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest against procuring agency's determination not to set aside the procurement for small business concerns is denied where the agency concluded, after researching of the procurement history and with the concurrence of the Small and Disadvantaged Business Utilization Officer and the Small Business Administration representative, that it could not reasonably expect to receive proposals from at least two responsible small business offerors.

DECISION

State Management Services, Inc. protests the General Services Administration (GSA) solicitation of commercial facilities management (CFM) services under request for proposals (RFP) No. GS-09P-92-KSC-0101 on an unrestricted basis. State Management contends that the requirement should be set aside for small business concerns.

We deny the protest.

GSA issued the RFP on December 30, 1992, to procure CFM services for the San Jose Federal Building/United States Court House, San Jose, California, under a fixed-price indefinite quantity contract with an economic price adjustment clause for a base period of 1 year with 4 option years. The CFM contractor was required to provide management, operation, maintenance (including preventive maintenance), and engineering at the property, which included the federal facilities, associated grounds, parking areas, buildings, facilities and utility systems. The RFP specified that the

CFM contractor would provide facilities management, operation and management of mechanical/electrical equipment, architectural and structural maintenance, custodial/pest control/trash removal, elevators, landscape and grounds maintenance, and reimbursable services.

Before the RFP was issued, the contracting officer, after an investigation, determined that it was not feasible to set aside the procurement for small businesses. The Small and Disadvantaged Business Utilization Officer (SDBUO) and the Small Business Administration's (SBA) Procurement Center Representative, who had been contacted for assistance in locating potential qualified small business competitors, concurred with this decision. After publishing a synopsis of the procurement as an unrestricted requirement in the Commerce Business Daily (CBD), GSA issued the RFP on an unrestricted basis.

On February 11, State Management protested that GSA failed to make a good faith effort to identify capable small businesses to meet the requirement. GSA proceeded with the procurement despite the protest and received 10 proposals in response to the RFP on the March 9 closing date, including a proposal from State Management. Six of these proposals were submitted by small businesses. The evaluation and award have been withheld pending our decision.

A decision whether to set aside a procurement for small business concerns is within the contracting officer's discretion, which we generally will not disturb absent a showing that it has been abused. See State Mgmt. Servs., Inc., B-251715, May 3, 1993, 93-1 CPD ¶ _____. Such a decision is governed by Federal Acquisition Regulation (FAR) § 19.502-2, which requires the procurement to be set aside when there is a reasonable expectation of receiving proposals from at least two responsible small business concerns and the award can be made at a reasonable price; conversely, unless such a determination can be made, a total small business set-aside should not be made. Id. In reaching the decision, the contracting officer must undertake reasonable efforts to ascertain whether there is a reasonable expectation that two or more responsible small business concerns will actually submit proposals at a reasonable price. See FKW Inc., B-249189, Oct. 22, 1992, 92-2 CPD ¶ 270.

The record shows that the contracting officer undertook a reasonable effort to ascertain whether there would be two or more responsible small business concerns who could submit proposals that would result in a contract at a reasonable price before making the determination not to set aside the procurement. As part of this effort, the contracting officer investigated the procurement history of CFM services

at this specific property, as well as the history at similar sized properties in the same region and in a neighboring region, and obtained the advice and concurrence of the SDBUO and SBA.

Specifically, the record shows that the contracting officer discovered that only two concerns had submitted proposals on the prior procurement for CFM services on this property, neither of which was a small business. The procurement history for similar properties in the region and in a neighboring region similarly reflected less than adequate small business participation. From GSA's investigation, no more than one small business at a time ever participated in a procurement for CFM services.¹ In consulting with the contracting officer from the neighboring region, the contracting officer was informed that prior to 1992, no small business had ever shown interest in participating in a procurement for CFM services. In this regard, CFM services on buildings of this size encompass a variety of services and personnel requiring considerable management oversight from a contractor with resources and expertise not usually available to small business concerns. See State Mgmt. Servs., Inc., supra. In addition, the contracting officer enlisted the assistance of the SDBUO and the SBA Procurement Center Representative for the purpose of identifying capable small businesses. These individuals were unable to identify adequate small businesses for this CFM requirement and concurred with the contracting officer's conclusion not to set aside the procurement.

State Management argues that if the requirement had initially been synopsisized in the CBD as a small business set-aside, instead of as an unrestricted procurement, the agency would have ascertained there were at least two responsible small businesses who could perform this work. In this regard, State Management claims that the synopsis of this requirement as unrestricted implied to small businesses that they could not compete and made it less likely to generate responses from small businesses. State Management further asserts that GSA should have searched for small businesses nationwide as opposed to locally and in the neighboring region.

¹In the region in question, the contracting officer found that only one small business had participated in a CFM procurement and that offeror's technical rating was low with an unreasonably high price, while in the neighboring region one small business was currently competing on a 1992 CFM procurement in which the award had not been made.

There is no requirement for using any particular method of assessing the availability of small businesses so long as the agency undertakes reasonable efforts to locate responsible small business concerns. FKW Inc., supra; Raven Servs. Corp., B-243911, Aug. 27, 1991, 91-2 CPD ¶ 203. Factors that may constitute adequate grounds for a decision not to set aside a procurement include prior procurement history, nature of contract, type of contract, market surveys, and/or advice from the agency's small business specialist and technical personnel. Id. Here, because the procurement history showed inadequate small business participation and no reasonable probability that two or more responsible small businesses could submit acceptable proposals at reasonable prices for CFM services on buildings of this size, and since the SDBUO and the SBA concurred that the requirement need not be set aside, we find reasonable the contracting officer's decision to issue the RFP on an unrestricted basis. See State Mgmt. Servs., Inc., supra.

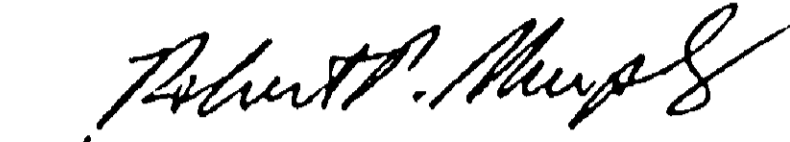
State Management argues that the mere presence of two or more small businesses on the bidders list shows that the requirement should be set aside. This factor is not conclusive in establishing that the requirement should be set aside, where, as here, the contracting officer, after reasonable efforts, could not ascertain that there were two or more responsible small businesses that would propose to successfully perform the CFM services at a reasonable price. Id. Small businesses often respond to advertisements for government multidiscipline requirements of this nature and are included on bidders lists solely because of subcontracting opportunities. Id.

State Management points out that more than two small businesses have in fact submitted proposals.² However, GSA did not become aware of this extent of small business interest until after the solicitation was issued by the agency. Information that first becomes available after issuance of a solicitation does not demonstrate that the contracting officer's prior determination not to set aside the procurement was unreasonable. FKW, Inc., supra. The regulations do not require the contracting officer to amend or cancel the solicitation after learning of interested, responsible small businesses, provided that he or she conducted a reasonable investigation regarding the possibility of two or more responsible small businesses competing for the procurement, as was the case here. Id.

²As indicated above, proposals have not been evaluated so it is not known whether the small business proposals are acceptable and/or reasonably priced.

Accordingly, we find that the contracting officer properly determined not to set aside the procurement.

The protest is denied.


James F. Hinchman
General Counsel