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Becker



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

Decision

Matter of: Miniscalc Corporation

File: B-258186.2

Date: October 18, 1994

DECISION

Miniscalc Corporation requests reconsideration of our August 29, 1994, decision dismissing its protest that it should have received award under invitation for bids (IFB) No. DAHA07-94-B-0001.

The IFB was advertised as a 100-percent small disadvantaged business (SDB) set-aside in the Commerce Business Daily (CBD). The protester, however, contended that the IFB itself was not identified as an SDB set-aside but only as a small business set-aside and therefore it, as the low small business bidder, should have received the award. We dismissed the protest upon finding that the IFB did contain the Notice of Small Disadvantaged Business Set-Aside, concluding that in light of this and the CBD notice Miniscalc should have been aware that only SDBs would qualify for award.

In requesting reconsideration, Miniscalc again asserts that the IFB described the procurement as a small business set-aside, not an SDB set-aside, and that it shall be able to rely on the IFB, rather than the CBD notice, as more "accurate and reliable."


CBD synopses generally are regarded as placing potential offerors on notice of the information contained in the synopses, Del Norte Technology, Inc., B-182318, Jan. 27, 1975, 75-1 CPD ¶ 53; Navigation Servs. Corp., B-255241, Feb. 10, 1994, 94-1 CPD ¶ 99, and the synopsis in this case clearly identified the procurement as an SDB set-aside. Even if we were to agree with the protester, however, that it should have been able to rely on the IFB itself, we would not agree that the IFB announced only a small business set-aside.

When a procurement is to be set aside exclusively for SDBs, Defense Federal Acquisition Regulation Supplement (DFARS) § 219.508-70 requires inclusion in the solicitation of the clause found at DFARS § 252.219-7002, which is entitled "Notice of Small Disadvantaged Business Set-Aside." That clause

(although identified as \$ 52,219-7002) was incorporated by reference into the solicitation on page I-2. While the solicitation also contained language reflecting the fact that only small businesses were eligible for award and did not indicate as prominently as have other solicitations that only disadvantaged small businesses were eligible, the explicit identification of the "Notice of Small Disadvantaged Business Set-Aside" clause on page I-2 as one of the clauses incorporated by reference should have been sufficient to apprise the protester of the SDB set-aside nature of the procurement. At the very least, if the protester found the IFB confusing in light of that clause and the small business set-aside provisions, it should have sought clarification prior to bid opening.

In any event, we point out that even if we agreed with the protester's reading of the IFB, that would not entitle the protester to award. Defense agencies must set aside for exclusive SDB participation procurements for which the contracting officer expects to receive bids from two or more responsible SDB concerns who can meet certain other requirements. DFARS § 219.502-2-70. Since that is apparently the case here, if the IFB did not properly established an SDB set-aside the contracting officer would be required to cancel it and issue a new IFB that clearly restricted the competition to SDB concerns.

The dismissal is affirmed.


Ronald Berger
Associate General Counsel