



Comptroller General
of the United States

404217

Washington, D.C. 20548

Decision

Matter of: Ameritech Enterprises, Inc.
File: B-261178
Date: June 29, 1995

Larry Russell, Jr. for the protester.
Georgia Vlahos, Esq., and Paul M. Fisher, Esq., Department
of the Navy, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Contracting officer's determination not to set aside a procurement for small disadvantaged business (SDB) concerns was reasonable where the agency synopsisized the procurement in the Commerce Business Daily (CBD) to assess whether responsible SDB concerns were interested in the procurement, and the expressions of interest received from SDB concerns either failed to provide the information required by the CBD announcement or evidenced that the firms lacked the capability to perform the work required under the solicitation.

DECISION

Ameritech Enterprises, Inc. protests the Department of the Navy's decision to issue invitation for bids (IFB) No. N68950-95-B-8810, for structural renovation work at Building 1000, Naval Air Warfare Center, Aircraft Division, Indianapolis, Indiana, on an unrestricted basis. Ameritech contends that the solicitation should be issued as a small disadvantaged business (SDB) set-aside.

We deny the protest.

Because no contract requiring this type of structural steel renovation had previously been set aside, the Navy published a synopsis in the Commerce Business Daily (CBD) on November 18, 1994, requesting statements of interest. The synopsis announced that the procurement of all labor, equipment, and material necessary to alter the main fire wall on Building 1000 to create a one-way fire wall and the construction of a new parapet wall was being considered as an SDB set-aside. The synopsis stated that the proposed work included cutting Building 1000 in half north to south

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along a line of 11 support columns, installing eight 25-foot columns, and reconnecting the east half of the cut building to the eight new columns while the west half remained attached to the existing columns. The principal work, primarily structural steel renovation work under Standard Industrial Classification (SIC) code 1791, would entail temporarily shoring, cutting, and reattaching the existing structural steel members of the building. The steel roof deck would be cut and an expansion joint added along the column line, and the parapet wall built along the path of the partially offset fire wall.

The synopsis instructed interested SDB concerns to provide the contracting officer with a statement of their eligibility as SDB concerns, evidence of bonding capability, specific information demonstrating their capability to perform projects of the complexity and magnitude of that outlined in the synopsis, and complete information concerning their management experience in similar work and their financial status, with references, not later than November 29. The synopsis also advised that if adequate expressions of interest were not received from SDB concerns, the IFB would be issued on an unrestricted basis.

The contracting officer reviewed all correspondence submitted by 10 firms in response to the synopsis (7 of which had submitted their material after the November 29 deadline) and found that only one of the 10 firms appeared capable of performing the work required by the IFB. This firm indicated that it had performed structural steel work as described under SIC code 1791 and this code was listed on its Business Plan filed with the Small Business Administration. As to the remaining firms, the contracting officer found that one firm was primarily an asbestos abatement firm; two firms had experience in roofing, air conditioning and heating repair, asbestos removal, ceiling replacement, water pipe replacement, carpentry and masonry/concrete work; one firm worked in lead abatement; two firms provided no documentation demonstrating their capability to perform the work required; and, two firms provided no information on their relevant experience or their bonding capacity. Ameritech's submissions listed only roofing experience and did not indicate any experience in structural steel work. Based on these responses, the contracting officer, who also serves as the agency's Small and Disadvantaged Business Utilization Specialist, determined that the IFB should be issued on an unrestricted basis.

Ameritech protests that the contracting officer prematurely determined not to issue the IFB as an exclusive set-aside for SDB concerns.

An acquisition of services, such as here, is required to be set aside for exclusive SDB participation if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible SDB concerns; (2) award will be made at a price not exceeding the fair market price by more than 10 percent; and (3) scientific and/or technical talent consistent with the demands of the acquisition will be offered. Defense Federal Acquisition Regulation Supplement (DFARS) § 219.502-2-70(a); Fields & Assocs., B-258021, Dec. 7, 1994, 94-2 CPD ¶ 225. We generally view this determination as a business judgment within the contracting officer's discretion, and we will not disturb a contracting officer's set-aside determination unless it is unreasonable. McGhee Constr., Inc., B-249235, Nov. 3, 1992, 92-2 CPD ¶ 318. However, a contracting officer must undertake reasonable efforts to ascertain whether he is likely to receive offers that would support a decision to set aside a procurement for SDB concerns, and we will review a protest to determine whether a contracting officer has done so. See Neal R. Gross and Co., Inc.; Capital Hill Reporting, Inc., 72 Comp. Gen. 23 (1992), 92-2 CPD ¶ 269.

The Navy's efforts, described above, to ascertain whether there would be sufficient SDB competition to warrant a set-aside clearly were reasonable, as was its final determination. There is no requirement that a contracting officer use any particular method for assessing the availability of SDBs. FKW, Inc., B-249189, Oct. 22, 1992, 92-2 CPD ¶ 270. Contrary to the protester's assertion that the decision here was made prematurely, the record shows that the Navy reviewed its procurement history and, finding no contracts for similar services, assessed the availability of SDBs by publishing an advertisement indicating the possibility of issuing the solicitation as a set-aside and requesting interested SDBs to respond. The synopsis provided clear instructions as to what information interested SDB concerns were to provide in their responses to aid the agency in determining whether to set aside the procurement for SDB concerns. Based on our review of these submissions, we agree that the agency reasonably concluded that there was not a reasonable expectation that offers would be obtained from at least two responsible SDB concerns.

The protester does not allege that the agency's assessment of the submissions from these 10 firms was improper and, in fact, does not argue that the agency's characterization of the protester as primarily a roofing firm is inaccurate. Moreover, the protester does not identify any SDB concerns that it believes to be capable of performing the work required under the solicitation. Based on these circumstances, we conclude that the Navy made a reasonable

effort to survey the marketplace to determine the likelihood of receiving acceptable SDB bids and reasonably determined, based on this effort, that an SDB set-aside was inappropriate because there was not a reasonable expectation of receiving offers from at least two responsible SDB firms at a price not exceeding the fair market price by 10 percent. McGhee Constr., Inc., supra.

The protest is denied.

\s\ Robert H. Hunter
for Robert P. Murphy
General Counsel