



Comptroller General
of the United States

Washington, D.C. 20548

Sylvia Schutz
Signed by John
Melody 155277

Decision

Matter of: National Security Analysts, Inc.
File: B-261211
Date: July 27, 1995

DECISION

National Security Analysts, Inc. (NSA) protests the decision of the Departments of the Army and the Air Force, National Guard Bureau Contracting Office (NGB-AQC), to issue request for proposals (RFP) No. DAHA90-95-R-0024, for technical support and management assistance services, as a total small disadvantaged business (SDB) set-aside.

We dismiss the protest.

The prior contract for the support and management assistance services requirement was awarded to NSA by the Air Force Washington Area Contracting Center (AFWACC) (contract No. F49650-93-D5000) under a small business set-aside solicitation. Subsequent to award of that contract, NGB established its own contracting office, NGB-AQC, to support all NGB activities. Administration of NSA's contract therefore was transferred to NGB-AQC, as was responsibility for the follow-on procurement for the same services. NGB-AQC advertised the RFP for these services as an exclusive SDB set-aside in the April 13, 1995 issue of the Commerce Business Daily (CBD). This prompted NSA's protest that the services are required to be procured under a repetitive small business set-aside rather than under an SDB set-aside.

Federal Acquisition Regulation (FAR) § 19.501(g) provides that:

"Once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service not subject to simplified small purchase procedures shall, if required by agency regulations, be acquired on the basis of a repetitive set-aside."

Department of Defense (DOD) Federal Acquisition Regulation Supplement (DFARS) § 219.501(g) provides that this FAR repetitive set-aside requirement is applicable to DOD.

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The proposed SDB set-aside clearly is proper under the regulations. AFWACC--an activity under the Air Force--and NGB-AQC--an activity under the Army--are separate activities with separate contracting offices. See DFARS § 202.101. AFWACC acquired the services under the prior procurement; NGB-AQC is procuring the services in issue here. It thus cannot be said that the same contracting office previously successfully acquired the services here under a small business set-aside.

NSA maintains that NGB-AQC should be considered the same contracting office for purposes of the regulations by virtue of its role in administering NSA's contract, which included placing delivery orders and exercising options. However, administering a contract awarded under a small business set-aside is not the same thing as having previously acquired the services under such a set-aside. In this regard, we have specifically held that the DOD repetitive set-aside requirement applies ". . . only where a procurement is being conducted by the same contracting office that successfully utilized a small business set-aside to acquire the identical item or service." The W.H. Smith Hardware Co., B-250028, Dec. 30, 1992, 92-2 CPD ¶ 454; see Curl's Bldg. Maintenance, B-237012, Dec. 1, 1989, 89-2 CPD ¶ 509. NGB-AQC did not utilize a small business set-aside in issuing purchase orders or exercising options under NSA's contract.


NSA also contends that the agency improperly set the procurement aside exclusively for SDBs, because there are not at least two qualified, responsible SDBs that can submit reasonably priced offers.

The regulations implementing the DOD SDB program provide that a procurement shall 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. DFARS § 219.502-2-70(a); Holmes & Narver Constr. Servs., Inc., B-253148, Aug. 24, 1993, 93-2 CPD ¶ 117.

The agency properly determined that there is a reasonable expectation of offers from at least two SDBs. NGB-AQC initially conducted a market survey, which resulted in responses from five SDB concerns. The agency analyzed these responses to determine the firms' qualifications to perform this requirement. While the analysis document does not set forth an ultimate conclusion as to whether the firms were (or were not) considered viable potential offerors, the agency reports that it believed 2 or 3 of the concerns were

capable of performing the requirement. The CBD synopsis, published following this survey, resulted in 87 requests from SDB concerns for copies of the solicitation. In light of this substantial expressed interest by SDBs, the agency's analysis, and the absence of any evidence from NSA establishing that it nonetheless is unlikely that two offers within 10 percent of the fair market price will be received, the proposed SDB set-aside is unobjectionable. See Railroad Constr. Co., Inc., B-249748.3, Dec. 29, 1992, 92-2 CPD ¶ 446.

The protest is dismissed.



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