

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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97/58

FILE: B-183482

DATE: June 24, 1975

MATTER OF: Evergreen Helicopters, Inc.

### DIGEST:

1. FPR § 1-2.404-1 permits cancellation of IFB after bid opening but prior to award with subsequent rejection of all bids where there is a compelling reason for taking action of this nature; and fact that IFB was deficient with regard to appropriate small business size standard presents necessary compelling reason for cancellation and readvertisement.
2. No basis for legal objection to procurement set aside for small business, since set aside was in accordance with FPR § 1-1.706-1(c).

On January 22, 1975, the Bureau of Land Management, United States Department of the Interior (Interior), issued invitation for bids (IFB) No. DSC-75-269, Aerial Herbicide Spraying for the Salem, Oregon, District. Bids were opened February 13, 1975, with Evergreen Helicopters, Inc. (Evergreen), as the apparent low bidder. However, on February 26, 1975, Interior was informed through a congressional source that Corvallis Aero Service had registered a complaint about the IFB and that it felt that Evergreen should not be considered as a small business concern.

The IFB in question had been totally set aside for small business and the IFB contained Bureau Form 1510-22a, Special Provisions, of which Clause No. 2 is Notice of Total Small Business Set-Aside. Paragraph (b) of the clause set the small business size standard at 500 employees or less. Interior subsequently

recognized, however, that it had not amended this paragraph (b) to show the new size standard that was established and published in the Federal Register, December 24, 1974, which is as follows:

"Any concern bidding on a contract for services requiring the use of one or more helicopters or fixed-wing aircraft is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed \$3 million."

In view of the above-mentioned complaint, the IFB was reviewed with Interior's regional solicitor's office in Denver, Colorado, and it was determined that since Interior had erred in the size standard and that since it was not in accordance with the regulations the IFB should be canceled and properly readvertised.

The cancellation notice was mailed March 3, 1975, stating the reason for cancellation and included the new IFB which corrected the size standard. The new IFB was scheduled for opening March 12, 1975. However, on March 6, 1975, Interior received a protest from Evergreen against its decision to cancel the IFB and readvertise. Interior denied Evergreen's protest on March 7, 1975, thus precipitating Evergreen's protest to our Office.

Evergreen first contends that the original IFB should not have been canceled. However, pursuant to Federal Procurement Regulations (FPR) § 1-2.404-1(a) (1964 ed., Circ. 1) an IFB may be canceled after opening but prior to award, and all bids rejected, where there is a compelling reason warranting action of this nature. In the instant procurement, the contracting officer determined, pursuant to FPR § 1-2.404-1(b), that cancellation was in the best interest of the Government as the original IFB was deficient with regard to the appropriate small business size standard for the procurement. Given these circumstances, we find no basis to conclude that the contracting officer acted improperly in canceling the initial IFB. See B-153300, March 18, 1964.

Evergreen also alleges that the low bidder under the readvertised solicitation, National Reforestation (National), is not a prospective responsible contractor. By letter of March 17, 1975, the contracting officer determined National to be a non-responsible bidder for this procurement. Accordingly, this issue of protest has become moot.


Finally, Evergreen takes issue with what it terms Interior's arbitrary policy of issuing 100 percent small business set-asides for the total class of procurements of this nature. Evergreen contends that an equitable distribution among large and small businesses for this class of procurements would be more appropriate.

Interior, on the other hand, has stated:

"41 C.F.R. 1-1.706-1(c) permits any individual or class of procurements to be set aside for small business concerns when such action is either unilaterally determined by a contracting officer or is jointly determined by an SBA representative and a contracting officer. In this case, the aerial spraying services to be performed fell within the scope of revegetation services set aside for small business by a joint class set aside determination of November 17, 1969 \* \* \* by SBA and BLM.\* \* \*"

While the total class set aside in this case may have precluded Evergreen from competing for the procurement, the fact remains that the set aside was in accordance with FPR § 1-1.706-1(c) (1964 ed., amend. 100). This being the case, there is no basis for any legal objection by our Office to this set aside or any set aside based on the joint determination.

Accordingly, the protest of Evergreen is denied.

  
Deputy Comptroller General  
of the United States