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A. Bates P. I.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190791

DATE: May 10, 1978

MATTER OF: Burton Myers Company

DIGEST:

1. Opinion of this Office remains unchanged from decision last year regarding geographic restriction on competition adopted by Small Business Administration (SBA). If SBA's minimum needs can be satisfied by restriction based on regional and district boundaries, they can also be satisfied by a restriction based on number of miles from a central point which is less restrictive of competition.
2. Although an agency can determine after consideration of all relevant factors involved that geographic restriction on competition is required, record does not show that manner by which SBA imposes restriction necessarily effectuates agency's minimum needs.
3. Agency's contention that geographic restriction based on areas of responsibility of local agency field offices is necessary for purposes of administrative control is not persuasive where record fails to show that close personal contact between local SBA offices and contractor is essential.
4. Contracting agency should extend limits of geographic restriction to broadest scope consistent with agency's needs. However, while SBA restriction should not be continued for future procurements, contracts awarded under protested procurement should not be terminated because record reveals that adequate level of competition was obtained despite restriction, and because SBA will need considerable time for study and analysis in order to draw new geographic areas.

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Burton Myers Company (Burton) protests the geographic restriction on competition contained in request for proposals (RFP) SBA-7(i)-MA-78-1, issued by the Small Business Administration (SBA) on November 14, 1977. The RFP solicited offers for providing management and technical assistance services to individuals or enterprises located in each of 45 specified geographic areas who are eligible for assistance under sections 7(i) and 7(j) of the Small Business Act. The procurement was a total small business set-aside. Awards have been made in 39 geographic areas. The requirement for management and technical services in 5 areas was canceled and certificate of competency proceedings are being conducted on the potential awardee in one area.

Burton takes exception to the provision on page 6 of the solicitation which states:

"Prior Experience Requirement. Offerors must have been engaged as an established business providing management and technical assistance services to the general public on a continuous basis within each geographical area for which it submits a proposal for a period of at least one year prior to the date of issuance of this solicitation. Ability to meet this experience requirement will be considered in determining the responsibility of the offeror."

Burton contends that the above-described restriction eliminates competition merely for the administrative convenience of the SBA. Citing our decision in Department of Agriculture's use of Master Agreement, 54 Comp. Gen. 606 (1975), 75-1 CPD 40, Burton argues that a restriction on competition may not be utilized for the purpose of minimizing the procuring agency's administrative burden. Burton states that a geographic restriction is proper only where the agency has determined that it is required to meet minimum procurement needs.

The SBA informs us that in this solicitation for management and technical services, it is attempting to solicit bids from "local" firms to perform services to "local" SBA offices. Each SBA field office has a specifically defined geographic area of responsibility, based primarily on its ability to assist the small business population in that area. According to the SBA, having a geographic restriction corresponding

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to each SBA field office's area of responsibility permits an almost immediate response by the solicitation awardee to the needs of the local small business. In addition, the SBA feels that based on past experience, an ancillary benefit of the geographic restriction has been the significant savings in travel and per diem costs incurred by awardees.

In Burton K. Myers and Company, B-187960, September 14, 1977, 77-2 CPD 187, we indicated in regard to the protest on the SBA's fiscal year 1977 procurement for management and technical services that we did not dispute SBA's assertion that its minimum needs could be satisfied only by having a contractor located in the vicinity of the contract performance. What we did question, however, was the manner in which the SBA designed its geographic restriction to determine which offerors could be eligible for award. We were of the opinion that if the SBA's minimum needs could be satisfied by a restriction based on regional and district boundaries, they could also be satisfied by a restriction based on number of miles from a central point. which under the circumstances appeared to be less restrictive of competition. We recommended, then, that prior to issuing future solicitations, the SBA reexamine the method of basing geographic restrictions on SBA regional and district boundaries.

The SBA states that it has reexamined its geographic restriction and has determined that it does not unduly restrict competition. Four hundred and fifty-five total proposals were received on the solicitation. Out of these 455 proposals, the SBA obtained at least three or more proposals from each of the 45 geographic areas with the exception of Little Rock, Arkansas (2), Fargo, North Dakota (1), and Helena, Montana (2).

We agree that the only justification for the geographic restriction adopted by the SBA is administrative convenience. Essentially, our view on the matter remains unchanged from our decision last year. We recognize that a procuring agency can determine after consideration of all relevant factors involved that a geographic restriction on competition is required. Plattsburgh Laundry and Dry Cleaning Corp.; Nu Art Cleaners Laundry, B-180380, July 15, 1974, 74-2 CPD 27. Nevertheless, despite the fact that the the SBA has reexamined its geographic restriction, we still

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do not believe that this particular restriction necessarily effectuates the SBA's minimum needs.

The following services are listed on page 5 of the RFP as those which the successful offeror will provide to eligible small businesses:

(1) bookkeeping systems installation and accounting services and instruction to the degree warranted by the size and nature of the business being served;

(2) production, engineering and technical advice as warranted;

(3) feasibility studies, market analyses and advertising expertise as warranted;

(4) guidance in the matter of seeking and executing Federal Government contracts; and

(5) specialized management training, advice, and guidance particularly germane to the specific type of business being assisted.

In light of the foregoing, it can be seen that the successful offeror within a geographic area has to maintain a close liaison with each and every eligible small business that requires its services. Furthermore, in order to have these services effectively fulfilled, the successful offeror would have to be located in the vicinity of the eligible small businesses and be fairly familiar with the nature of their businesses. We believe, then, that the purpose of a properly drawn geographic restriction would be to insure that the successful offeror has been in the area long enough to have gained experience with the business problems toward which its services will be directed and to have established a working relationship with the particular small business community which it is to assist.

On pages 26-91 of the RFP the exact coverage of each of the 45 geographic areas is set out in sequential order. Also, a breakdown is given for each area regarding the types of services to be rendered; the estimated number of task days for each service; the total cost for each type of service; the estimated cost of travel and per diem; and the total estimated contract amount.

The determination of the proper scope of a particular geographic restriction is for the most part a matter of judgment and discretion for the procuring agency, involving consideration of the services being procured, past experience, market conditions and other factors. Descomp, Inc., 53 Comp. Gen. 522 (1974), 74-1 CPD 44. Nevertheless, we find it difficult to conclude that the 45 geographic areas are so drawn as to insure that the management and technical services contemplated in the RFP will be adequately performed. In other words, we do not think that the SBA's geographic areas serve a useful or necessary purpose other than to facilitate the administration by local field offices with the contractors. The record shows that the SBA is more concerned with the relationship between the offeror and its field offices than it is with the relationship the offeror has with the particular small business community which the offeror is to assist.

There is no uniformity in these geographic areas with regard to distance from major metropolitan centers where many of the eligible small businesses would likely be located. For example, geographic area # 2 covers the States of Massachusetts, Rhode Island, and Connecticut. This area encompasses three large cities - Boston, Providence, and Hartford. Hartford, Connecticut, is approximately 100 miles from Boston while Providence, Rhode Island, is approximately 50 miles from Boston. On the other hand, Baltimore, Maryland, which is approximately 40 miles from the District of Columbia, is in a different geographic area. It seems incongruous to us that an offeror in Northern Virginia (such as the protester) could be incapable of providing management and technical assistance to small businesses located in Baltimore while an offeror in Hartford, Connecticut, is qualified to provide such assistance to small businesses approximately 100 miles away in Boston.

Apparently, the SBA seeks to justify the way these geographic areas have been established by emphasizing the role of the local field office. Once a contract has been entered into, task orders for assistance are to be issued as needed by the local SBA offices. More specifically, all orders for services are to be placed on behalf of the Government by the SBA Project Manager designated to manage the particular contract. Page 14 of the RFP provides that the task orders are to be issued in writing by the Project Manager and are to contain:

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(1) a description of the services to be performed, in detail, including the number of man-days of services authorized by category;

(2) the name and address of the client to receive services specified and the period of performance authorized; and

(3) an estimated sum for the completion of the task order.


We have found that an agency's geographic limitation has a reasonable basis where there is a demonstrated need for "close liaison" between agency personnel and the contractor. See CompuServe, B-188990, September 9, 1977, 77-2 CPD 182. On the record before us, however, we are unable to conclude that there is a demonstrated need here for such close liaison. Moreover, in our decision last year, we stated that we failed to understand the SBA's concern with the coverage of its local offices because selection of contractors without strict regard to whether their offices are located within a given SBA region or district would not appear to affect either the administrative responsibility of individual SBA offices or the coverage provided by the contracts awarded.

Accordingly, we recommend that the Administrator of the SBA adopt in future solicitations for management and technical assistance to eligible small businesses a more realistic restriction to make certain that potential awardees have gained enough experience with "local" small businesses to provide effective service. Consideration should be given to extending geographic limits for many metropolitan areas in the United States to the broadest scope that is consistent with the above-described needs of the SBA. See Paul R. Jackson Construction Company, Inc., and Swindell-Dressler Company, a Division of Pullman, Incorporated, A Joint Venture, B-183713, October 9, 1975, 75-2 CPD 220.

We do not, however, recommend termination of any contracts awarded under the protested RFP or other corrective action as to the procurement before award. In our opinion, the SBA will need considerable time for the study and analysis needed to draw up geographic areas consistent with our decision. See Nationwide Building Maintenance, Inc., 55 Comp. Gen. 693 (1976), 76-1 CPD 71. In addition, the record does show

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that the SBA received 455 total proposals. Therefore, although we conclude that the geographic areas as presently drawn would likely be restrictive of competition in all future procurements of the type being protested, competition was obtained, notwithstanding the fact that these areas do not fulfill the SBA's need to have awardees familiar with the problems of the local small business community which they are to assist. Cf. Metal Trades, Inc., B-186098, August 3, 1976, 76-2 CPD 119.


Deputy Comptroller General
of the United States