



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-228050.4

January 13, 1988

The Honorable Glenn M. Anderson  
Member, U. S. House of  
Representatives  
P. O. Box 2349  
Long Beach, CA 90801-2349

Dear Mr. Anderson:

This responds to your inquiries of November 5 and November 13, 1987, received by our Office on November 17 and 25, respectively, concerning protests filed by Fred Jackson of Computer Tomography Repair Services, Inc. (CTRS), a small business.

CTRS protested the Veterans Administration (VA) decision not to set aside for small business request for quotations No. 28-87ST, for maintenance services for government-owned Computerized Axial Tomography (CAT) Scanner equipment. By decision B-227746.2 dated October 6, 1987, our Office denied CTRS' protest. We found that the contracting officer did not abuse his discretion in deciding not to set aside this procurement for small business concerns, even though the service previously was acquired by set-aside, because the record showed that he reasonably did not expect a sufficient number of offers from responsible small business concerns and award at a reasonable price. The contracting officer relied primarily on a prior solicitation subsequently canceled for which the VA received bids only from large businesses.

CTRS also protested any award under request for proposals (RFP) No. 600-005-88, issued by the VA for maintenance of General Electric CAT scanner equipment and an array

processor. CTRS protested VA's decision not to set aside the RFP for small business. It also objected to the requirements that offerors provide a warranty on the array processor and that the contractor use long life GE X-ray tubes for maintenance of the machine. We denied CTRS' protest. We found that the contracting officer's conclusion, relying on the prior solicitation experience, not to set aside the RFP was reasonable because the record again showed he reasonably did not expect that offers would be received from at least two responsible small business concerns and that award would be made at a reasonable price. We understand that you have now received our letter of November 2, 1987, transmitting a copy of this decision to your office.

With regard to the warranty requirement, as noted in our opinion, VA recognized that under current circumstances, the original equipment manufacturer, GE, enjoyed a competitive advantage in warranting the array processor. The VA reported that it would have awarded a noncompetitive contract to GE had other firms not advised the VA that notwithstanding that advantage, they could compete with GE. Since we found no evidence of preferential treatment or unfair action by the VA, we could not find that the agency was required to take action to equalize GE's advantage.

Finally, we found the agency's justification for use of GE long life tubes was reasonably based on the need to minimize delay in critical diagnosis and treatment of patients by reducing down-time for tube replacement. CTRS did not rebut the VA's justification.

In your letter dated November 13, you point out that Diagnostic Equipment Service (DES) submitted an offer under RFP No. 600-005-88 and advise that CTRS asserts that DES is a small business and that under these circumstances the contracting officer's decision not to set aside the procurement was incorrect.

We point out initially that CTRS did not make this assertion to us prior to our issuing a decision. Assuming that CTRS did not discover this information until after our decision was issued, under our Bid Protest Regulations, 4 C.F.R. § 21.12 (1987), CTRS had 10 working days to request our Office to reconsider our decision.

On November 17, CTRS did submit a timely request for reconsideration of No. B-228050, but failed to identify any errors of law or fact in that decision. We therefore dismissed the request by notice of November 19. (In its request for reconsideration, CTRS requested documents in our files; we are providing CTRS the documents in accordance with our procedures for releasing such information.)

With regard to CTRS' claim that DES competed as a small business under RFP No. 600-005-88 and thus that the VA's decision not to set aside the procurement was incorrect, we note that the abstract for the RFP on which DES submitted its offer did not identify DES as a small business. In addition, DES in correspondence to our Office did not indicate it was a small business nor did it protest the issuance of the RFP on an unrestricted basis. (See copy of DES protest and our decision, B-228050.2, copies enclosed.) In any event, even if DES was a small business, this would not render the contracting officer's determination not to set aside the procurement per se invalid. As indicated in our prior decision, the judgment as to whether there is a reasonable expectation of receiving offers from at least two small business concerns involves a business decision that we will not question in the absence of an abuse of discretion. At the time the contracting officer made his decision, the record indicated CTRS was the only small business interested in the VA requirement.

We hope that this information is helpful to you.

Sincerely yours,

  
James F. Hinchman  
General Counsel

Enclosures