



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ruchman and Associates, Inc.

File: B-275974

Date: April 25, 1997

Neal H. Ruchman for the protester.

Dorothy L. Foley, Esq., Department of Justice, for the agency.

Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's determination not to set procurement aside for small business concerns was proper where agency reasonably concluded--based on the amount, scope, and nature of the services required, and concurrence of the Small and Disadvantaged Business Utilization Officer--that it could not expect to receive proposals from at least two responsible small business offerors at fair market prices.

DECISION

Ruchman and Associates, Inc. (RAI) protests the Department of Justice's (DOJ) decision to issue request for proposals (RFP) No. JHENR-97-0015, for integrated administrative and litigation support services, on an unrestricted basis. RAI contends that the RFP should be set aside for small businesses.

We deny the protest.

The services are to be provided to the Environmental and Natural Resources Division (ENRD), a DOJ litigating division practicing civil and criminal law nationwide and employing approximately 708 attorneys and legal support professionals, most of whom are stationed in one of four (soon to be five) locations in the Washington, D.C. metropolitan area. This procurement implements the agency's plan to develop contractor-operated integrated services centers in three ENRD locations to perform all mail/messenger/delivery, reproduction, office supply, and records management tasks. ENRD has never before contracted out the full range of services contemplated here; there thus is no incumbent contractor or prior procurement history.

Acquisitions expected to exceed \$100,000 must be set aside for exclusive small business participation where there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns and that award will

be made at fair market prices. Federal Acquisition Regulation (FAR) § 19.502-2(b); American Overseas Book Co., Inc., B-257989, Dec. 1, 1994, 94-2 CPD ¶ 217 at 3. We will review an allegation that a procurement should be set aside to determine whether the agency undertook reasonable efforts to ascertain the likelihood of adequate small business competition and whether its determination is reasonable in light of the information obtained through those efforts. Mortara Instrument Inc., B-272461, Oct. 18, 1996, 96-2 CPD ¶ 212 at 3-4; State Management Servs., Inc., B-252312, June 21, 1993, 93-1 CPD ¶ 474 at 2.

The agency proceeded reasonably here. Its conclusion that a set-aside was not appropriate was based on its determination that no small business was likely to have the capability to perform the breadth, amount, and the integrated nature of the services required, the government estimate for which was \$90,000,000 (for 1 base and 4 option years). For example, DOJ focused on the fact that the contractor will be required to (1) provide and maintain a great number of copiers and telefacsimile machines of many different types and capabilities, with service to be provided within 30 minutes of a service call; (2) photocopy an estimated 450,000 copies of documents monthly; (3) receive, send, and keep a tracking system of all telefacsimile mail; (4) receive, sort, reroute, and deliver all ENRD mail to and from 15 sites in the Washington, D.C. area; (5) prepare all outgoing mail, including overnight and other special delivery mail; (6) provide courier service, (including providing and maintaining a reliable fleet of vehicles); (7) operate multiple supply rooms in three different buildings (including stocking the supply rooms and delivering office supplies in very short time periods); (8) maintain ENRD's case files, and operate records management centers; (9) staff and maintain the service centers, including as many as six photocopying centers, during the 12-hour normal business day; and (10) maintain a reserve of sufficient personnel, who have received DOJ security clearances, to fill in for absent employees or to respond to a need for extra personnel. The volume and scope of the services to be provided--and consideration of whether the required services are beyond the capacity of small businesses--are a proper focus for the set-aside determination. See, e.g., Mortara Instrument, Inc., *supra*; CardioMetrix, B-260747, July 18, 1995, 95-2 CPD ¶ 28 at 2-3.

The agency also researched and visited other large federal and private sector entities which utilize contractors to provide integrated administrative services, and learned that none was utilizing a small business contractor. Finally, the agency consulted the DOJ Small and Disadvantaged Business Utilization Officer (SDBUO) on the matter. After reviewing the contract requirements and the research and analysis conducted by ENRD, he found the following factors most significant: (1) the size and scope of the services required; (2) the integrated nature of the services required; (3) the inflexible deadlines imposed on the contractor; and (4) the requirements for photocopying and facsimile machines and a large number of active and reserve personnel. He concluded it was very unlikely that two responsible small businesses would submit proposals at fair market prices because they would

either lack the capital necessary to supply the required equipment and personnel or would have to acquire it for this contract, which, in turn, would make it impossible to offer a fair market price. In reaching his conclusion, the SDBUO utilized the Small Business Administration Procurement Access Source System (SBAPASS), which contains descriptive information about individual small businesses that have requested to be included in the database under specific standard industrial classification (SIC) codes. The SDBUO's search of SBAPASS yielded the names of several small business concerns for the applicable SIC code. However, based on the information for each concerning capitalization, expertise and the services they provide, he concluded that none of the businesses identified would be a responsible small business likely to submit a proposal for the comprehensive services required here at a fair market price.

We think the agency's efforts to determine the likelihood of receiving small business offers clearly were adequate and that the information considered provided a reasonable basis for its decision to issue an unrestricted RFP. In this regard, the facts that the requirement was a new one, that the government estimate was \$90 million, and that the required tasks clearly were extensive and would be expected to require substantial capital to perform, all support the agency's determination. The SDBUO's concurrence further supports the reasonableness of the determination. See Talon Mfg. Co., Inc., B-257536, Oct. 14, 1994, 94-2 CPD ¶ 140 at 10. At the same time, there is no evidence bringing into question the agency's finding that no small business was in a position to perform at a fair market price.¹ In its comments on the agency report, RAI failed to rebut any aspect of the rationale underlying the agency's determination that a set-aside is not appropriate; notably, RAI does not assert that it or any other particular small business has the capability to perform the contract at a fair market price. Under these circumstances, the agency properly issued the RFP on an unrestricted basis.

The protest is denied.

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¹The agency did receive several small business responses to the Commerce Business Daily notice for the requirement. However, there is no evidence that any of these small businesses were interested in competing for the requirement. In this regard, such expressions of interest by themselves are not sufficient to establish the likelihood of small business competition at fair market prices, since small businesses commonly respond to advertisements for government procurements solely to remain apprised of potential subcontracting opportunities. Premiere Vending, 73 Comp. Gen. 201, 208-209 (1994), 94-1 CPD ¶ 380 at 10. The protester does not assert otherwise.