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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Global Solutions Network, Inc.

File: B-292568

Date: October 3, 2003

Ronald Newlan for the protester.

Mark Langstein, Esq., and Terry Hart Lee, Esq., Department of Commerce, and John W. Klein, Esq., and Kenneth Dodds, Esq., Small Business Administration, for the agencies.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's determination not to set aside procurement for Historically Underutilized Business Zone (HUBZone) businesses was reasonably based on the agency's determination that it did not expect to receive proposals from at least two responsible HUBZone firms capable of satisfying this solicitation's particular requirements at fair market prices.

DECISION

Global Solutions Network, Inc. protests the terms of solicitation No. AB133C-03-RP-0047, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), for database management support services to support and maintain NOAA's environmental databases. Global maintains that the RFP, issued as a small business set aside, should have been set aside for Historically Underutilized Business Zone (HUBZone) businesses.

We deny the protest.

The RFP, issued June 18, 2003 as a small business set aside, contemplated the award of an indefinite-delivery, indefinite-quantity contract for a base year with 4 option years. The statement of work required services to develop and maintain NOAA's environmental databases in three general categories: (1) to serve as an integral component of NOAA's Watershed Database and Mapping Projects, (2) to support site-specific investigations, including evaluations of risk to NOAA resources at priority waste sites, and (3) to explore innovative approaches for evaluating

sediment chemistry and toxicity and to develop new guidelines for screening sediment in support of risk assessment.

The RFP requires a high level of environmental database management expertise and programming experience in both Microsoft FoxPro and Microsoft Access. In this regard, the RFP states that certain personnel must have a minimum of 5 years experience managing, designing, and developing environmental databases and database applications using Microsoft FoxPro or Microsoft Visual FoxPro, and Microsoft Access, and that these individuals have experience using these types of data in hazardous waste site investigations or aquatic ecological risk assessment; and that these individuals must have a minimum of 5 years experience working with contaminants and waste site data, including ecological risk assessment.

Prior to issuing the solicitation the contracting officer advertised on the Federal Business Opportunities (FedBizOpps) website (www.arnet.gov/FedBizOpps/) to notify small businesses of the upcoming solicitation set aside for small businesses, and to provide them an opportunity to request a copy. Agency Report, Tab 1, FedBizOpps Notice (Feb. 28, 2003).¹

In May, the contracting officer received a call from a HUBZone firm inquiring whether the upcoming solicitation would be set aside for HUBZone concerns. The contracting officer replied that the incumbent firm was a small business and that, as she was unaware of two or more HUBZone firms that would meet the solicitation requirements to perform the work, there was currently no plan to set the solicitation aside for HUBZone concerns.

Apparently as a consequence of the call, the contracting officer then conducted a search on the Small Business Administration's (SBA) Procurement Marketing Access Network (Pro-Net) to identify certified HUBZone firms working in the field of database management.² The contracting officer found nine firms that met the search criteria. The contracting officer then reviewed the qualifications of four of the nine firms (selected randomly), and determined that none of these firms cited the specific Microsoft software expertise with an environmental background in contaminants and hazardous waste, as required by the solicitation. On this basis, the contracting officer determined that the solicitation should be set aside for small business (but not HUBZone) firms, which was approved on May 22 by Commerce's Small Business Specialist.

¹ The FedBizOpps notice was modified three times, on March 7, March 12 and May 14. Agency Report, Tabs 2-4, FedBizOpps Modifications.

² Pro-Net is an on-line database of information on more than 195,000 small, disadvantaged, Section 8(a), HUBZone, and women-owned businesses. See www.pro-net.sba.gov.

On June 3, another HUBZone firm contacted the agency regarding whether the solicitation would be set aside for HUBZone firms, and was informed that, as the incumbent was a small business and there were not two or more HUBZone firms that could satisfy the solicitation requirements, the solicitation would be issued as a small business set-aside.³ On June 6, the protester contacted the contracting officer regarding whether the solicitation would be set aside for HUBZone businesses. The contracting officer informed Global Solutions that, because there was no reasonable expectation that two or more HUBZone firms could perform the work, the solicitation would be issued as a small business set-aside. On June 9, the HUBZone firm that had contacted the contracting officer on June 3 submitted information relating to its qualifications, from which the contracting officer determined that, while the firm possessed the required Microsoft software experience, it lacked personnel with experience in working with contaminant and waste site data, including aquatic ecological risk assessment, as required by the RFP.

The agency issued the solicitation on June 18 as a small business set-aside, and this protest followed. In response to this protest, and prior to the solicitation closing date, the agency requested that Global Solutions submit a capability statement, or in some way demonstrate that it could meet the solicitation's requirements. Global Solutions declined to submit any statement of its capabilities and qualifications.

GSN protests that the agency made an unreasonable determination not to set aside the procurement for HUBZone small business concerns.

Acquisitions must be set aside for HUBZone small business concerns if the agency determines that there is a reasonable expectation that offers will be received from two or more HUBZone small business concerns, and that award will be made at a fair market price. Federal Acquisition Regulation (FAR) § 19.1305(a), (b). Generally, our Office regards such a determination as a matter of business judgment within the agency's discretion, which we will not disturb absent a clear showing that it has been abused. Cf. White Storage & Retrieval Sys., Inc., B-256952, July 20, 1994, 94-2 CPD ¶ 35 at 2-3 (involving small business set-aside determination). An agency must make reasonable efforts to ascertain whether it will receive offers from at least two HUBZone small business concerns with the capabilities to perform the work, and we will review a protest to determine whether the agency has done so. Id. Nonetheless, we think that the use of any particular method of assessing the availability of HUBZone small businesses is not required, and measures such as prior procurement history, market surveys, and advice from the SBA may all constitute adequate grounds for a contracting officer's decision not to set aside a procurement. See American Imaging Servs., Inc., B-246124.2, Feb. 13, 1992, 92-1 CPD ¶ 188 at 3.

³ The contracting officer did not inform the firm that she had already performed a Pro-Net search for HUBZone businesses.

As noted above, the contracting officer performed a Pro-Net search for certified HUBZone firms working in the field of database management and could not find any that could meet the solicitation requirements for Microsoft software expertise with an environmental background in contaminants and hazardous waste.⁴ The contracting officer also reviewed the capability statement of another HUBZone firm that had expressed interest in the procurement, but found it did not evidence that that firm could satisfy the solicitation's requirements. Based on these results, and with the concurrence of the Commerce's Small Business Specialist, the contracting officer determined that there was no reasonable expectation that the agency would receive two or more offers from HUBZone firms in response to the RFP.

Additionally, after this protest was filed, the contracting officer revisited her prior Pro-Net search results and reviewed the information on the remaining five firms. She determined, once again, that she could not conclude that any of these firms met the RFP requirements.

Most significantly, the contracting officer afforded the protester an additional opportunity to demonstrate its capabilities after the protest was filed; not only did Global Solution fail to respond to this opportunity, but it still has produced no evidence of its capabilities to successfully perform the solicitation requirements.

Finally, we solicited the views of the SBA during our development of the record. SBA stated in its report:

NOAA is in the best position to know what its needs are, and [Global Solutions] has not alleged or proven that the experience requirements contained in the Solicitation are unreasonable. Moreover, there is no evidence in the record that any HUBZone [small business concern] possesses the experience necessary to meet NOAA's requirements. Simply put, [Global Solutions] has failed to show that it, or any other HUBZone [small business concern], has the experience required by NOAA's Solicitation.

SBA Report at 4. The SBA determined that the contracting officer's assessment that she did not have a reasonable expectation of receiving offers from at least two HUBZone firms was not unreasonable. We accord substantial weight to the fact that the contracting officer's determination was subsequently reviewed by the SBA during this protest and found not to be unreasonable. See American Artisan Prods., Inc., B-292380, July 30, 2003, 2003 CPD ¶ 132 at 6.

⁴ The protester has not alleged that these do not represent the agency's actual requirements.

In view of the foregoing considerations, we have no basis to question the agency's judgment not to set aside this requirement for HUBZone concerns.

The protest is denied.

Anthony H. Gamboa
General Counsel