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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Para Scientific Company

File: B-310976

Date: February 25, 2008

Hiram Reinhart, Para Scientific Company, for the protester.
Sherry K. Kaswell, Esq., Department of the Interior, for the agency.
Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protester's contention that a procurement must be set aside for small business concerns is dismissed where, during the course of the protest, the Small Business Administration concluded that the protester does not qualify as a small business under the applicable North American Industrial Classification System code; under these circumstances, the protester is not an interested party for the purposes of arguing that the procurement must be set aside.

DECISION

Para Scientific Company protests the decision of the Department of the Interior, United States Geological Survey, National Water Quality Laboratory (USGS), to issue request for quotations (RFQ) No. 08CRQQ0050, for various laboratory and water quality testing chemicals, on an unrestricted basis. Para Scientific, a small business, contends that the requirement should be set aside for small business concerns.

We dismiss the protest.

On November 21, 2007, USGS published a presolicitation notice on the Federal Business Opportunities website, in which it announced its intent to procure on an unrestricted basis various laboratory and water quality testing chemicals. The presolicitation notice stated that the list of chemicals would be included in the solicitation that would be available on or about December 3 on the designated website. The presolicitation notice further stated that no hard copy of the solicitation would be available.

The solicitation was issued on December 5 seeking quotes for 20 different chemicals for a base year and 2 option years. The RFQ included an estimated quantity for each chemical to be delivered FOB Destination to Denver, Colorado. The RFQ provided that in order to be considered for award, vendors had to provide pricing for all chemicals during the base year and option years. Quotations were to be submitted by 2 pm on December 19.

After the agency denied Para Scientific's request that the solicitation be set aside for small business concerns, this protest was filed with our Office.

In response to the protest, the agency maintains that it reasonably decided not to set aside this procurement for small business concerns based on prior procurement history, as well as on the knowledge and advice of agency technical experts and the agency's Business Utilization Development Specialist. The agency also notes that no small business concerns responded to the presolicitation notice or to the solicitation.

At the request of our Office, the Small Business Administration (SBA) provided an advisory opinion on the issues presented in the protest. The SBA agreed with the agency's decision not to set aside the procurement and opined that agency did not have a reasonable expectation of receiving offers from at least two small business concerns for this requirement.

Moreover, the SBA advised our Office, the agency, and the protester that the solicitation contained an incorrect North American Industrial Classification System (NAICS) code. According to the SBA the proper NAICS code for this procurement is one of the NAICS codes relating to chemical manufacturing. The SBA further explained that in order for a small business concern to qualify on a set-aside for these items it must either "be the manufacturer of the end item" or qualify as a nonmanufacturer. See 13 C.F.R. § 121.406(a) (2007). In order to qualify as a nonmanufacturer, the SBA states that a firm (1) may not have more than 500 employees; (2) must be primarily engaged in the retail or wholesale trade and normally sell the type of item to be supplied; and (3) must supply an end item manufactured by a small business in the United States, unless SBA has granted a waiver from the nonmanufacturer rule. 13 C.F.R. § 121.406(b).

There is nothing in the record here that shows that Para Scientific qualifies as a small business for this work, even if it were set aside. The protester does not manufacture the chemicals, does not offer to provide them from some other small business, and does not allege that the SBA has granted a waiver from the nonmanufacturer rule. Since it appears that Para Scientific does not qualify as a small business concern under the appropriate NAICS code, Para Scientific is not a prospective small business offeror under this RFQ were it set aside, and therefore is not an interested

party to challenge the agency's decision to procure these goods without reserving the requirement for small businesses. Encompass Group LLC, B-299602, B-299617, Aug. 10, 2005, 2006 CPD ¶ 159 at 4; 4 C.F.R. §§ 21.0(a), 21.1(a) (2007).

The protest is dismissed.

Gary L. Kepplinger
General Counsel