



**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: The Atlantic Company of America, Inc.

File: B-293974

Date: July 1, 2004

Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for the protester.

Lee W. Crook, III, Esq., GSA-Public Buildings Service, and Laura Mann Eyester, Esq., Small Business Administration, for the agencies.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

As a matter of policy, GAO will not disturb HUBZone small business set-aside decision where four proposals were received from HUBZone concerns that agency determined were technically capable and offered a fair market price.

DECISION

The Atlantic Company of America, Inc. protests the decision of the General Services Administration (GSA) to issue request for proposals (RFP) No. GS-07P-04-UUC-0008, for masonry restoration at the U.S. Customs House in New Orleans, as a set-aside for Historically Underutilized Business Zone (HUBZone) small business concerns.

We deny the protest.

Where, as here, an acquisition exceeds the simplified acquisition threshold, it 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 such concerns, and that award will be made at a fair market price. Federal Acquisition Regulation (FAR) § 19.1305(a), (b). Generally, our Office regards a determination to set aside a procurement as a matter of business judgment, within the agency's discretion, that we will not disturb absent a clear showing that it is unreasonable. See York Int'l Corp., B-244748, Sept. 30, 1991, 91-2 CPD ¶ 282 at 6.

GSA reports that, in determining to set aside this procurement for HUBZone concerns, the contracting officer considered information from the GSA project

manager that two HUBZone concerns had performed a significant number of similar projects in the GSA region under consideration. In addition, the contracting officer conducted an initial search on the Pro-Net database¹ using the North American Industry Classification System (NAICS) codes² listed by the two identified firms, as well as a later search using these and an additional NAICS code (238140). These searches revealed eight additional firms that appeared to the agency to be qualified to perform the contract. Based on this information, the contracting officer concluded that there was a reasonable expectation that two or more HUBZone small business concerns would submit offers at a fair market price, and released the solicitation as a HUBZone set-aside under NAICS code 238140. Subsequently, proposals were received from four HUBZone small business concerns that the agency has determined are technically capable of performing and have offered a fair market price.

Atlantic challenges the reasonableness of the agency's set-aside determination on the ground that its methodology in researching the likelihood of receiving HUBZone concern competition was flawed. It complains, for example, that the contracting officer improperly considered the prospect of receiving competition under NAICS codes other than 238140, the code under which the solicitation was set aside. Atlantic concludes that, notwithstanding that four acceptable HUBZone concern offers ultimately were received, the set-aside decision was improper because GSA unreasonably determined that it could expect to receive offers from two or more HUBZone concerns.

The protest is without merit. Even if we agreed that the set-aside determination was not adequately supported, we will not object to the determination under the circumstances here. In this regard, as a matter of policy, we view the subsequent receipt of proposals from multiple set-aside concerns as essentially validating an agency's set-aside determination; we therefore will not disturb such a determination where adequate set-aside concern competition is received. See York Int'l Corp., supra, at 7 (small business set-aside). Since the agency received four offers from acceptable HUBZone concerns and anticipates making award at a fair market price--

¹Pro-Net is an SBA website that serves as the single source for identifying HUBZone concern vendors.

² The NAICS code is used by the federal government to identify and classify specific categories of business activity that represent the lines of business that a firm conducts. See FAR subpart 19.1; Rochester Optical, B-292247, Aug. 6, 2003. 2003 CPD ¶ 138 at 2 n.2.

Atlantic does not assert that any of these firms is not technically capable or is otherwise ineligible for award—we find that the set-aside determination was reasonable.

The protest is denied.

Anthony H. Gamboa
General Counsel