

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

61135

FILE: B-186303

DATE: July 14, 1976

MATTER OF: J&H Smith Mfg. Co. Inc.

97929

DIGEST:

1. Notwithstanding that small business firm will subcontract to large business major portion of work under small business set-aside, small business is eligible for award under solicitation, since record establishes that it will be making significant contribution to manufacture of end item.
2. GAO has no authority under Freedom of Information Act to determine what information must be disclosed by other Government agencies.

J&H Smith Mfg. Co. Inc. (J&H Smith) protests the proposed award of a contract to furnish Antenna Elements to Autodyne Manufacturing Company, Inc. (Autodyne), under invitation for bids (IFB) No. DSA900-76-B-0835, issued as a small business set-aside by the Defense Electronics Supply Center, Defense Supply Agency (DSA), Dayton, Ohio.

J&H Smith contends that Autodyne intends to subcontract all or a substantial portion of the contract to a large business in violation of the terms of the IFB. In support of such contention, J&H Smith alleges that Autodyne is doing exactly that in its performance of a contract with DSA to furnish 8,000 units of the same item. J&H Smith also requests that this Office provide it with certain information in accordance with the Freedom of Information Act, 5 U.S.C. § 552 (Supp. IV, 1974), pertinent to a pending protest that it has filed with the Department of Labor, in which it contends that Autodyne is not a manufacturer or regular dealer under the Walsh-Healey Public Contracts Act.

We have held that as long as a small business firm, which has subcontracted a major portion of the work under a contract with the Government to large business, makes some significant contribution to the manufacture or production of the contract "end item," a contractual requirement that the "end item" be manufactured or produced by small business has been met. See 49 Comp. Gen. 41 (1969).

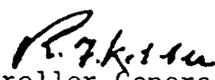
In its bid, Autodyne represents that it is a small business concern, and that all supplies to be furnished under the contract will be manufactured or produced by a small business concern. In addition, the contracting officer states that documents submitted by Autodyne indicate that Autodyne intends to perform the proposed contract as follows:

- "a. Purchase threaded stock tubing from True Temper Corporation, a large business.
- "b. Through the use of a bench grinder, belt sander, tapping machine, various gigs, dies, and gages, perform in its plant a series of grinding, tapping, reaming and testing operations.
- "c. Subcontract plating, painting and silk screening to small business firms.
- "d. Repeat various tests and package the item."

Based on the foregoing, it appears that small business will be making a significant contribution to the manufacture of the end item. Therefore, and since there has been no question raised as to the small business status of Autodyne, Autodyne is eligible in such respect for award under the solicitation. In this connection, the contracting officer indicates that Autodyne's present contract with DSA referenced by the protester is apparently contract DSA900-76-C-1780, which was not a small business set-aside and did not require Autodyne to furnish an end item manufactured or produced by small business concerns. Accordingly, Autodyne's performance under that contract is not relevant to its eligibility for award under IFB No. DSA900-76-B-0835.

Concerning J&H Smith's request under the Freedom of Information Act, our Office has no authority under such act to determine what information must be disclosed by Government agencies. See Dewitt Transfer and Storage Company, 53 Comp. Gen. 533 (1974), 74-1 CPD 47.

In view of the above, the protest is denied.


Deputy Comptroller General
of the United States