

DECISION



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

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FILE: B-145136

DATE: July 2, 1976

MATTER OF: Department of Defense's Use of Total Labor Surplus
Area Set-Asides

DIGEST:

Proposed test for use of total labor surplus area set-asides procurements is approved subject to conditions that (1) ample competition is determined to exist under each set-aside selected for test, (2) set-aside will be canceled if bid prices are not in lowest price obtainable category, and (3) testing will be limited to small number of procurement actions.

By letter of March 22, 1976, the Assistant Administrator for Contract Administration, Office of Federal Procurement Policy, has requested an advance decision concerning the propriety of a proposed test procedure within the Department of Defense involving total labor surplus area (LSA) set-aside procurements.

The Office of Federal Procurement Policy (OFPP) is willing to ask DOD to conduct a test of new approaches in assisting LSA firms to obtain contract awards provided that a test plan can be devised that will provide valid information which can be used in determining whether new legislation is actually needed, and in drafting any new legislation.

However, OFPP recognizes that in order to carry out the intent of the Maybank Amendment (Sec. 644 of the 1954 Department of Defense Appropriation Act, 67 Stat. 357, and succeeding DOD appropriation Acts) which prohibits the payment of price differentials on contracts made for the purpose of relieving economic dislocations, the procurement regulations provide only for partial LSA set-asides. Consistent with the intent of the amendment, the decision in 40 Comp. Gen. 489 (1961) established the general policy that a LSA set-aside may only be made at the "lowest price obtainable".

OFPP offers certain rules under which the test of total LSA set-asides could be conducted without violating the intent of the amendment. The rules would require that: (1) there be a determination of the extent of competition within labor surplus areas before making the set-aside, thus reasonably insuring that "ample competition does in fact exist within LSAs"; and (2) as a "safety measure" provide

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that the set-aside may be canceled prior to the award if the bid prices are determined to be other than in the "lowest price obtainable" category. In addition, the test would be conducted at approximately three buying activities so that it would only affect a small number of procurement actions.

Under the circumstances described, we have no objection to instituting the proposed test. We have requested the Office of Federal Procurement Policy to advise us of the findings and conclusions when the testing is completed.

R. F. K. 11/12
Deputy Comptroller General
of the United States