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Henry Bufford
Proc. II

DECISION



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

FILE: B-187554

DATE: March 2, 1977

MATTER OF: Barrier Industries, Inc.

DIGEST:

1. Authority to remove items to be procured by Government from competitive bidding, in order to allocate their manufacture among qualified workshops for the blind and other severely handicapped, rests by statute with "Committee for Purchase from the Blind and Other Severely Handicapped," whose decisions are not appropriate for review by GAO.
2. Adequacy of QPL testing and facility inspection performed by GSA, in order to aid "Committee for Purchase from the Blind and Other Severely Handicapped" in determining whether product should be designated for manufacture by qualified workshops, is not reviewable by GAO under its protest procedures.

Barrier Industries, Inc. (Barrier) protests the deletion from General Services Administration (GSA) solicitation 9PR-W-858-77T/KN of its 1976 requirements for water emulsion floor wax for GSA Regions 1, 2, 3, 5, and 10. Barrier also protests the subsequent receipt of this requirement pursuant to 41 U. S. C. § 46-48 (Supp. 1974) (the Javits-Wagner-O'Day Act) by the Center for the Blind (Center), a nonprofit agency for the blind in Philadelphia, Pennsylvania. Barrier has also sought relief in the Federal District Court for the District of Columbia, Barrier Industries, Inc. v. Jack Eckerd et al., Civil Action No. 76-1976 (D. D. C., filed October 22, 1976).

The genesis of Barrier's protest lies in a determination of August 6, 1976 by the "Committee for Purchase from the Blind and Other Severely Handicapped" (Committee) to place on its procurement list three sizes of water emulsion floor wax. See 41 Fed. Reg. 32943, August 1, 1976.

Under the authority of the Act, the Committee may publish in the Federal Register, and may add to and delete from, a list (the procurement list) of the commodities produced by any qualified nonprofit agency for the blind or other severely handicapped

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which the Committee determines are suitable for procurement by the Government. If any entity of the Government intends to procure any commodity on the procurement list, that entity must, in accordance with the rules and regulations of the Committee, procure such commodity, at the fair market price as set by the Committee, from a qualified nonprofit agency for the blind or other severely handicapped, if the commodity is available within the period required by the Government. Because the Committee's placement of these items on its procurement list by Federal Register publication required the Government to buy them only from a qualified nonprofit agency, it effectively removed the items from the competitive market.

Briefly, Barrier believes that the Committee inadequately assessed the impact that its removal of these items from open competition would have on Barrier's financial stability. Barrier contends that the deletion of the items placed it in a less advantageous bidding position, since it diminished Barrier's ability to purchase raw materials in bulk and to combine freight shipments on these F.O.B. destination items. Barrier asserts that because of the removal of destination points near its New Jersey plant, it was thus forced into a conservative bid situation on the remaining portions of the solicitation, and may lose all future awards for these commodities. A further basis for Barrier's protest is that the three items involved were listed on GSA's Qualified Products List (QPL).

In this regard, when GSA informed the Committee that these floor wax items were QPL procurement items, the Committee requested GSA to qualify the waxes produced by the Center for placement on the QPL. Its determination to place the items on its procurement list for manufacture by the Center was made contingent on GSA's approval of the Center's waxes for QPL placement. GSA informed the Committee on August 2, 1976, that the waxes submitted for testing by the Center had been placed on the QPL. As noted above, by Federal Register publication of August 6, 1976, the items were placed on the Committee's procurement list. To support its argument that the regions involved should not have been removed from GSA's solicitation, Barrier alleges inadequacies in GSA's QPL testing procedures, concluding that the Committee's reliance on GSA's approval of the Center's products for the QPL was misplaced.

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Once the Committee determined that the items of floor wax should be placed on its procurement list, GSA was required to remove those items from its competitive procurement, which it did by issuing an amendment deleting the appropriate regions from its solicitation. GSA had no discretion in this matter since the Act provides that listing determinations made by the Committee are binding on all Government procuring activities. We see no error in GSA's subsequent decision to leave the remainder of its solicitation open to competitive bidding. Nor do we question GSA's determination to make award under the remaining portions of the solicitation notwithstanding Barrier's pending protest. FPR 1-2. 407-8(b)(4).

The only remaining issue concerns the propriety of the Commission's determination to place the wax items on its procurement list. The authority to make these determinations is, pursuant to the Act, vested solely in the Commission which is made up of members who are qualified to deal with issues relating to the blind and severely handicapped. While our Office has the audit authority under Section 4 of Public Law 92-28 to examine the books and records of the Committee, we agree with the Committee that our Office is not empowered to reverse or amend Committee determinations. Only the Committee itself or a court of competent jurisdiction can reverse or amend a Committee determination on suitability, fair market price or workshop qualification which it is empowered to make under the Act. See in this connection, Ballerina Pen Company v. Kunzig, 433 F.2d 1204 (1970). Finally, GSA's product testing, facility inspection, and placement of the Center's products on the QPL were ancillary to the Committee's determination to place them on its procurement list; whatever the defects of GSA's procedures are alleged to be they would provide no basis for this Office to recommend removal of the products from the procurement list.

Accordingly, Barrier's protest is dismissed.


Acting Comptroller General
of the United States