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J. Cohen

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20348**

PL 1

FILE:

DATE: February 15, 1978

B-190320

MATTER OF:

Simpson Electric Company

DIGEST:

Protest against small business set-aside of procurement of electronics item is denied, since contracting officer reasonably anticipated receipt of offers from sufficient number of small businesses so that award would be at reasonable price.

Solicitation No. FPGG-Y-36250-11-10-19-76 was issued by the General Services Administration (GSA) as a Multiple Award Schedule covering Federal Supply Schedule FSC Group 66, measuring and testing instruments. After issuance, the contracting officer determined that item 66-16e, 3.5 digit multimeters (DMMs), should be set aside for small business in accordance with Federal Procurement Regulations (FPR) § 1-1.706-1 (1964 ed. amend. 100) and § 1-1.706-5(a) (1964 ed. amend. 101).

FPR § 1-1.706-1(c) requires that a procurement be set aside for small business participation if the contracting officer determines it to be "in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns." FPR § 1-1.706-5(a) provides in pertinent part:

" * * * the entire amount of an individual procurement or class of procurements shall be set aside for exclusive small business participation where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices.
* * * past procurement history of the item or similar items is always important
* * *"

B-190370

These regulations implement in part the congressional policy reflected in the Small Business Act, 15 U.S.C. § 644 (1970), of aiding and protecting small business by requiring the procurement of a "fair" portion of Government supplies and services therefrom. See J. H. Rutter Rex Manufacturing Co., Inc., 55 Comp. Gen. 902, 904 (1976), 76-1 CPD 182.

Accordingly, the solicitation was amended to set the 3.5 DMMs aside for small business as special item No. 66-315.

Simpson Electric Company (Simpson), a large business, protests the contracting officer's decision. Simpson contends that the contracting officer "had no idea whether the prices to the Government from small business would be reasonable," alleging that the contracting officer never inquired what small business prices would be or what discounts would be offered by large businesses. Simpson further contends that a set-aside of 3.5 DMMs is otherwise not in the interests of the Government or business generally, for a number of reasons. Those reasons include Simpson's beliefs that the Government would not benefit from large business improvements to the 3.5 DMM which is, apparently, a rapidly changing item; the set-aside penalizes the large businesses that developed the technology for the item and thereby made entry into the field possible for many small businesses; the set-aside will adversely affect small business dealers employed by the large businesses to help produce and market the DMMs; and small businesses cannot provide timely delivery and adequate service. In addition, Simpson points out that it is located in a labor surplus area, as are certain other large business DMM manufacturers.

A determination under FPR § 1-1.706-5(a) concerning whether adequate competition may reasonably be anticipated so that awards will be made at reasonable prices is basically a business judgment requiring the exercise of broad discretion by the contracting officer. Therefore, our Office will not substitute its judgment for that of the contracting officer, and will sustain a

B-190320

determination under that regulation absent a clear showing of abuse of discretion. See Kinnett Dairies, Inc., B-107501, March 24, 1977, 77-1 CPD 209; Development Associates, Inc., et al., B-183773, August 18, 1975, 75-2 CPD 112; 45 Comp. Gen. 228, 230 (1965). In this connection, and as indicated in FPR § 1-1.706-5(a), past procurement history is an important factor for consideration in determining whether a small business set-aside is appropriate. See Tufco Industries, Inc., B-189323, July 13, 1977, 77-2 CPD 21. In addition, awards under set-asides may be at higher prices than are otherwise obtainable. 53 Comp. Gen. 307, 310 (1973).

In regard to the subject determination, GSA states in a report on the protest:

"Under our Multiple Award procurements any responsible firm offering an item covered by the solicitation, and meeting the benchmark price can be awarded a contract. After award, agencies are required in accordance with FPMR 101-26.408-2 to purchase the lowest cost product which will meet their needs. The contracting officer conducted a telephonic survey of the 3 agencies who are the principal users of special item number 66-315. Each indicated that the small business product could fulfill their needs. Although 6 of the 14 current contractors for the item at issue are small business concerns and the two lowest prices on the schedule are those of small businesses, the bulk of the sales are going to large business (89% of all sales went to 4 large businesses). Therefore, in order to assure that a fair proportion of the procurement was placed with small business, this set-aside is necessary.

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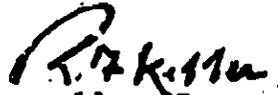
"Six of the fourteen companies currently on schedule are small business contractors. Consequently the contracting officer had a

B-190320

reasonable expectation that a sufficient number of small business offers would be received. In fact 14 such offers were received in response to this solicitation."

In view of the history of the procurement of 3.5 DMMS as to both the number of small businesses interested in supplying the item to the Government and the small business prices on the Schedule, as well as the fact that 14 offers were received from small business firms, we consider that the procurement was properly set aside under the criteria discussed above. See Allied Maintenance Corporation, B-188522, October 4, 1977, 77-2 CPD 259.

The protest is denied.


Deputy Comptroller General
of the United States