

6803

11/11/78
92-1

DECISION



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

FILE: B-190081

DATE: June 22, 1978

MATTER OF: Clifton Precision Division of Litton
Systems, Inc. - Reconsideration

DIGEST:

Issuance of sole-source solicitation as follow-
on to competitive procurement is not in itself
evidence of fraud by procuring officials in
earlier procurement; refusal by Department of
Justice to investigate protester's antitrust
allegations against competitor does not change
fact that Department, not GAO, is appropriate
agency for consideration of such matters.

Clifton Precision Division of Litton Systems,
Inc. (Clifton), requests reconsideration of our
decision in Clifton Division of Litton Systems, Inc.,
B-190081, May 9, 1978. There we denied Clifton's
protest of the award of a contract for horizontal
situation indicators (HSI's) by the Aeronautical
Systems Division, Wright-Patterson Air Force Base,
Ohio (Air Force), to Clifton's competitor, Astro-
nautics Corporation of America (ACA).

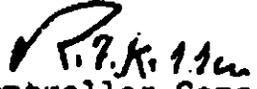
Clifton bases its request on its allegations that
the Air Force has issued a sole-source solicitation,
F33657-78-R-0484, to procure 43 HSI's from ACA, and
that the Department of Justice has denied Clifton's
request to investigate alleged anticompetitive prac-
tices by ACA. Clifton argues that the issuance of
the sole-source solicitation, when coupled with the
original affirmative determination of ACA's responsi-
bility in the face of Clifton's allegations of anti-
competitive activities, is evidence of bad faith on
the part of the contracting officer.

The issuance of a sole-source solicitation
does not in itself constitute evidence of fraud in
the prior procurement. In any event, Clifton states

that it is protesting this solicitation separately, and its validity will be considered in that protest rather than here. We were aware of Clifton's allegations of anticompetitive practices in considering our original decision, and we found that the contracting officer did not act in bad faith in making an affirmative determination of responsibility, based upon a positive preaward survey recommendation. As we stated, an affirmative determination of responsibility will not be reviewed by our Office, absent evidence of fraud by procuring officials or failure to comply with definitive responsibility criteria in a solicitation. Clifton has presented no evidence of either.

The Department of Justice decision not to investigate Clifton's allegations of anticompetitive activities does not change our view that the Department, and not our Office, is the appropriate agency for consideration of such matters. Cf., Gull Airborne Instruments, Inc., B-188743, March 21, 1978, 78-1 CPD 217. The decision constitutes a determination by the appropriate authority that Clifton's allegations do not warrant investigation. In light of this determination, Clifton can hardly maintain that the Air Force acted in bad faith in determining ACA to be a responsive, responsible bidder despite Clifton's allegations.

Clifton's remaining arguments merely reiterate points made in its prior submissions. Since Clifton fails to state any error of law or material information not previously considered, our prior decision is affirmed.


Acting Comptroller General
of the United States