

**DECISION**



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

*8230*

FILE: B-192431

DATE: November 2, 1978

MATTER OF: Aydin Vector Division

**DIGEST:**

1. Protest against small business set-aside of procurement of telemetry systems is denied, since contracting agency reasonably anticipated receipt of offers from sufficient number of small businesses so that award would be at reasonable price.
2. GAO will not consider protest concerning small business size status of firm since conclusive authority to determine size status of business concerns is vested in SBA.
3. Where protest filed by large business against small business set-aside is denied and large business protester is therefore ineligible for award, GAO will not consider large business protester's objection to alleged solicitation impropriety since protester is not an interested party which would be affected by resolution of issue.

Aydin Vector Division (Aydin), a large business firm, protests letter request for technical proposals (LRFTP) TM 12055, issued by the Armament Development and Test Center, Eglin Air Force Base (Air Force), Florida.

The LRFTP is the first step of a two-step formally advertised procurement for the fabrication, test and delivery of FMT-190-3 telemetry systems. The solicitation was issued on April 20, 1978, as a 100 percent set-aside for small business, with a closing date for receipt of technical proposals of July 20, 1978. Aydin filed a timely protest to our Office on July 20, 1978.

Aydin objects to the determination to restrict the procurement to small business firms. It alleges that there is only one small business firm, Microcom Corporation (Microcom), capable of meeting the requirements and that the Air Force lacked a reasonable basis to expect that offers would be received from a sufficient number of responsible small business concerns to assure that the award would be made at a reasonable price as required by Defense Acquisition Regulation/Armed Services Procurement Regulation (DAR/ASPR) § 1-706.5 (1976 ed.). The protester also alleges that while Microcom is within the size limitations of small business, it does not properly qualify as a small business because it is dominant in the field.

In support of its protest, Aydin maintains that over the past three years the Air Force and the Department of the Navy (Navy) have issued eight solicitations for telemetry systems similar to the one called for in the LRFTP. Aydin alleges that five of the procurements were awarded to Microcom, that two were awarded to large business firms and that one was divided between Microcom and a large business firm. Aydin contends that this procurement history demonstrates insufficient small business participation in the telemetry systems market to assure adequate competition and reasonable prices.

Section 15 of the Small Business Act, 15 U.S.C. 644 (1976), in pertinent part, provides:

"\* \* \* small-business concerns within the meaning of this chapter shall receive any award or contract or any part thereof, \* \* \* as to which it is determined by the [Small Business] Administration and the contracting procurement \* \* \* agency \* \* \* to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small-business concerns \* \* \*."

In addition, 10 U.S.C. 2301 (1976) states:

"It is the policy of Congress that a fair proportion of the purchases and contracts made under this chapter [defense procurement, generally] be placed with small business concerns."

These two statutes reflect a Congressional policy of aiding and protecting small business by requiring the procurement of a fair portion of Government supplies and services from it. J. H. Rutter Rex Manufacturing Co., Inc., B-190905, July 11, 1978, 78-2 CPD 29.

Additionally, DAR/ASPR 1-706.5(a)(1) provides:

\* \* \* \* the entire amount of an individual procurement or a class of procurements, including but not limited to contracts for maintenance, repair, and construction, shall be set aside for exclusive small business participation (see 1-701.1) if the contracting officer determines that there is reasonable expectation that offers will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices.  
\* \* \* \*

The agency has reported that the determination to set aside the procurement for small business was jointly made by the contracting officer and the small business specialist at the Armament Development and Test Center. The agency states the decision to restrict the procurement was made after 19 small business concerns had been identified which are regular manufacturers of the type of equipment called for under the solicitation. Four of the concerns identified, the agency states, had furnished similar equipment under contract with the Government. Moreover, the agency points out that 15 small business firms requested copies of the LRFTP after notice of the proposed procurement was published in the "Commerce

Business Daily." The agency indicates this interest reinforced its expectation that offers would be received from a sufficient number of small business concerns so that award would be made at a reasonable price.

A determination under DAR/ASPR § 1-706.5 regarding 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. Simpson Electric Company, B-190320, February 15, 1978, 78-1 CPD 129. Therefore, our Office will not substitute its judgment for that of the contracting officer, and will sustain a determination under that regulation absent a clear showing of abuse of discretion. See Kinnett Dairies, Inc., B-187501, 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).

The record in this case does not indicate the contracting agency abused its discretion in determining to restrict the procurement to small business. On the contrary, the record clearly shows that the determination of the contracting agency was reasonable and based upon its research regarding the availability of small business sources of supply and the expectation of adequate competition. While Aydin alleges that a majority of recent Air Force and Navy procurements for similar telemetry systems were awarded to Microcom, there is nothing in the record to indicate that these procurements lacked adequate competition or that the award prices were unreasonable. In view of this, we consider the procurement properly set aside under the criteria described above.

With regard to the allegation that Microcom does not qualify as a small business because of its dominance in the field, we have been advised that the Air Force requested the Small Business Administration's (SBA) Philadelphia Regional Office to make a determination of Microcom's small business status in light of the protest. By letter dated August 16, 1978, SBA notified the Air Force of its determination that Microcom is a small business.

Under 15 U.S.C. § 637(b)(6) (1976), the SBA is empowered to determine exclusively matters of small business size status for Federal procurement purposes, with the result that decisions of the SBA and its Size Appeal Boards are not subject to review by this Office. Sachs/Freeman Associates, Inc., B-190990, January 24, 1978, 78-1 CPD 65. Therefore, we will not consider this further.

Finally, by letter dated August 24, 1978, Aydin also protests the solicitation requirement that offerors conduct an "environmental qualification test" of their offered product and submit with their proposal "certified test data." Aydin alleges the provision is unduly restrictive and favors "one prior manufacturer, since no small business can expend the sums necessary for design, manufacture and test of the product without contractual coverage."

Our Bid Protest Procedures require that a protesting party have some legitimate interest in the procurement, partly to insure diligent participation in the protest, before our Office will consent to consider the protest. 4 C.F.R. 20.1(a) (1978) ; Dynamic International, Inc., B-186421, September 9, 1976, 76-2 CPD 228. As noted above, Aydin is ineligible to participate in this procurement. Thus, our consideration of this issue would not affect Aydin which under the circumstances is not an interested party. See Coleman Transfer and Storage, Inc., B-182420, October 17, 1975, 75-2 CPD 238.

The protest is denied.

  
Deputy Comptroller General  
of the United States