

11451

DECISION



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

[Protest of GSA Set-Aside Determination]

FILE: B-194414

DATE: September 19, 1979

MATTER OF: Savory Equipment Company

DW to B

DIGEST:

1. Protest against small business set-aside of multiple award procurement of Federal Supply Service's requirements for toasters is denied, since contracting agency reasonably anticipated receipt of offers from sufficient number of small business concerns so that award would be at reasonable price.
2. General Services Administration reasonably determined that product which conventionally toasts bread and product which grills bread are both "toasters" within meaning of item description in multiple award schedule. Multiple award schedule item descriptions are often broad because intent is to identify for user agencies comparable or related items which contractors are able to supply.

2072006

Savory Equipment Company (Savory), a large business concern, protests the General Services Administration's (GSA) determination to set aside for small businesses special item No. 302-31, "Toasters, Rotary, Heavy Duty," on its solicitation FPGG-Z-36350-N-3-27-79. The solicitation was issued for a multiple award schedule contract covering various items in Federal Supply Schedule (FSS) Group 73, Part III, Food Service, Handling, Refrigeration, Storage and Cleaning Equipment.

Oct 17
" 2

Savory alleges that only one small business concern, Hatco Company (Hatco), is capable of meeting the requirements and, therefore, GSA lacked a reasonable basis to expect that offers would be received from a sufficient number of responsible small business concerns

*Multiple award contracts
Small bus set-asides
" contracts*

~~007026~~

to assure that the award would be made at a reasonable price. Savory further contends that although GSA received offers from two small business concerns, Hatco and The Holman Group (Holman), Holman does not manufacture a toaster. Rather, Holman manufactures a product designed to grill buns which, according to Savory, leaves large areas of the bread untoasted.

The agency reports that the contracting officer and the Small Business Administration (SBA) representative determined to set aside the determination upon the expected availability of three small business concerns. Data available at the time the determination was made showed that the previous year's schedule contracts were awarded to suppliers of toasters manufactured by three small business concerns: Hatco, Wells and Prince Castle. The agency subsequently found, however, that Wells was not a small business; it also concluded that Prince Castle did not offer a toaster. However, after further investigation, GSA determined that Prince Castle's product is properly regarded as a toaster even though it browns bread by grilling it, that is by placing it in direct contact with the heating element.

Generally, a procurement is set aside for small business participation if the contracting officer, either unilaterally or with the concurrence of the SBA representative, determines such action to be "in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns" and there is a reasonable expectation that bids or proposals will be received from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. See Simpson Electric Co., B-190320, February 15, 1978, 78-1 CPD 129. A determination whether adequate competition reasonably may be anticipated is basically a business judgment. We will sustain the determination absent a clear showing of abuse of discretion. Simpson Electric Co., supra; Aydin Vector Division, B-192431, November 2, 1978, 78-2 CPD 316.

The reasonableness of a set-aside determination must be judged on the basis of the facts and circumstances existing at the time of the determination. DeWitt Transfer and Storage Co., B-182635, March 26, 1975, 75-1 CPD 180. Past procurement history is an important factor to consider in determining whether a set-aside is appropriate. Tufco Industries, Inc., B-189323, July 13, 1977, 77-2 CPD 21.

The record in this case does not indicate an abuse of discretion. Based on the past procurement history available at the time the set-aside determination was made (Hatco, Wells and Prince Castle were all viewed as small businesses on the basis of the prior suppliers' certifications), the contracting officer and SBA representative reasonably believed there would be competitors available for the present procurement. The fact that subsequent investigation revealed that Wells was not a manufacturer does not itself render the set-aside determination unreasonable, and we have upheld such determinations where only one reasonably priced small business bid was received. U.S. Divers Company, B-192867, February 26, 1979, 79-1 CPD 132; Wyle Laboratories, B-186526, September 7, 1976, 76-2 CPD 223.

Furthermore, while Savory argues that the Prince Castle and Holman products do not toast bread, but instead grill it, we find no basis for disputing GSA's determination that both products are "toasters" as that term is used in the solicitation regardless of whether they brown bread with direct or indirect heat. The intent of the item description in a multiple award schedule is to identify as closely as practicable comparable items in order to provide initial guidance to user agencies as to what related items contractors are able to supply. Borg-Warner Health Products, Inc., 56 Comp. Gen. 811, 813 (1977), 77-2 CPD 42. This often involves rather broad item descriptions or categories instead of detailed specifications. We think GSA could reasonably determine that the products offered by Prince Castle and Holman fit within the broad category of "toaster" since that term is apparently used to describe generally those products which brown bread.

In short, the agency here received two small business offers which it states are reasonably priced and fit within the toaster category. The record also shows that the agency made a good faith determination that adequate small business competition existed to justify the set-aside. Accordingly, we find no legal basis to object to the GSA's actions in this matter.

The protest is denied.


Deputy Comptroller General
of the United States