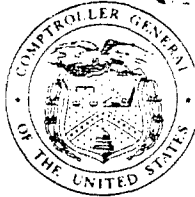


13654 PL-II

**DECISION**



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

FILE: B-196540

DATE: May 6, 1980

MATTER OF: Otis Elevator Company

**DIGEST:**

[Protest of small business set-aside  
is denied where protester submits no  
evidence that contracting officer  
abused his discretion in determining  
there was reasonable expectation of  
adequate small business participation  
to assure reasonable price. Fact that  
only one valid small business bid is  
received does not, by itself, inval-  
idate original determination.]

Otis Elevator Company (Otis) protests the Veterans Administration's (VA) setting aside for small businesses solicitation No. IFB-690-3-80 for the maintenance and inspection of nine elevators and one dumbwaiter at the VA Medical Center in West Roxbury, Massachusetts.

The solicitation was set aside for small business concerns because two firms which had represented themselves as small in bidding on the prior year's contract were still active and other small business concerns had asked to be added to the bidders mailing list. In all, seven firms listed as small businesses appeared on the hospital's bidders mailing list for elevator services.

Three bids were received in response to the instant IFB, of which two were from the firms which had bid as small businesses the prior year. Otis (a large business) and another firm (shown on the mailing list as a small business) submitted "no bid" responses. As the result of size status protests by Otis, the Small Business Administration (SBA) determined that the two bidders which had competed as small business concerns the prior year were now other than small. Therefore, only one responsive small business bid was received.

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Otis asserts that the contracting officer was not required to set aside the procurement for small business and in any event did not have a reasonable expectation that bids would be received from a sufficient number of responsible small businesses so that award could be made at a reasonable price. Otis has not submitted any evidence in support of this latter assertion; it merely points out that the contracting officer simply relied upon past acquisition history in determining whether to set aside the procurement and states that since the VA received only one bid from an eligible small business, this reliance was misplaced because the contracting officer "could not have had the requisite reasonable expectation" of sufficient small business participation as required by the applicable regulations. We find the protest to be without merit.

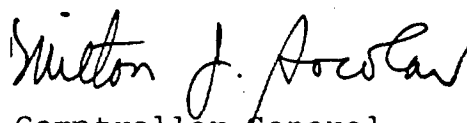
Although Otis correctly states that nothing required that this procurement be set aside for small business, the determination to do so is within the contracting officer's discretion to see "that a fair proportion of Government procurement is placed with small business concerns," provided that there is a reasonable expectation that bids or proposals will be received from a sufficient number of responsible small business concerns so that the award will be made at a reasonable price. Savory Equipment Company, B-194414, September 19, 1979, 79-2 CPD 203. Past procurement history is an important factor to consider in determining whether a set-aside is appropriate. Savory Equipment, supra; see Otis Elevator Company, B-195831, November 8, 1979, 79-2 CPD 341.

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, and since 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. Otis Elevator Company, B-195873, December 19, 1979, 79-2 CPD 419.

Here, Otis has not shown that the contracting officer's reliance upon past procurement history in reaching his determination was an abuse of discretion, and it is well settled that the receipt of only one valid small

business bid does not invalidate a set-aside determination which has a reasonable basis at the time it is made. U.S. Divers Company, B-192867, February 26, 1979, 79-1 CPD 132; Berlitz School of Languages, B-184296, November 28, 1975, 75-2 CPD 350. Consequently we have no basis to object to the set-aside.

The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Rowland".

For the Comptroller General  
of the United States