

117510

20800

Gibson

DECISION



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

FILE: B-205142

DATE: February 10, 1982

MATTER OF: Ontario Knife Company

DIGEST:

1. Although protester (incumbent contractor) is not solicited, resolicitation is not required where, as here, a significant effort is made to obtain competition, bid prices are reasonable, and there is no deliberate attempt to exclude protester from competition.
2. Protester's question regarding a bidder's small business size status becomes academic where agency rejects the bid as late. In any event, questions concerning small business size status are not for consideration by GAO since exclusive authority is statutorily vested with Small Business Administration.

Ontario Knife Company protests the award of any contract for cutlery and food handling tools under invitation for bids (IFB) 9FCC-OKX-A-A0495/81, issued by the General Services Administration (GSA). The protest is denied in part and dismissed in part.

Ontario, the incumbent contractor, objects to the procurement because it did not receive a copy of the IFB and therefore did not have an opportunity to submit a bid. On this basis, the protester requests that GSA cancel the solicitation and resolicit the procurement.

Additionally, in its comments to the agency report, Ontario argues that GSA improperly accepted a late bid submitted by Young Associates, the alleged subsidiary of

a large cutlery business. Because this procurement was set aside for small business, and the parent company is large, the protester believes that Young as its subsidiary is ineligible for award.

As to Ontario's first contention, it has consistently been our position that unless there is evidence of a conscious or deliberate effort to exclude a bidder from participating in the competition, we will not require a procuring agency to resolicit bids if the agency makes a significant effort to obtain competition and will award a contract at a reasonable price. Integrity Services, B-196516, November 2, 1979, 79-2 CPD 316. This rule applies even if the incumbent contractor does not receive a copy of the IFB. Wichita Beverage, Inc., d/b/a Pepsi-Cola and Seven-Up Bottling Company, B-191205, July 6, 1978, 78-2 CPD 11.

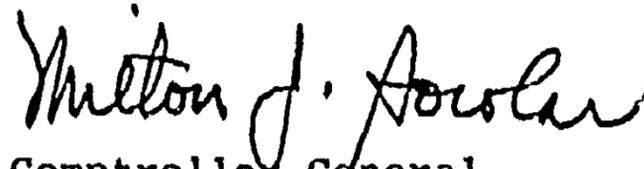
The record indicates that 227 firms were solicited, the invitation was synopsisized in the Commerce Business Daily, and five bids were received. Accordingly, it appears that the agency made a significant effort to obtain competition and we have no reason to question the reasonableness of the bid prices received. Since there is no evidence that GSA deliberately excluded Ontario from competition, there is no basis for this Office to preclude GSA from awarding the contract on the original solicitation.

Regarding the protester's argument that Young is ineligible for award under this small business set-aside because it is a subsidiary of a large business, GSA has advised us that Young's bid has been rejected in accordance with the agency's late bid rules. Therefore, the question raised by the protester concerning Young's small business size status has become academic.

In any event, 15 U.S.C. § 637(b)(6) (1976) provides that the Small Business Administration has exclusive authority to determine matters of small business size

status for Federal procurement purposes. Therefore, our Office does not review questions of a bidder's small business size status. See Industrial Lease Inc. of Fayetteville, B-204446, August 31, 1981, 81-2 CPD 191.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON (D.C. 20548)

B-205142

February 10, 1982

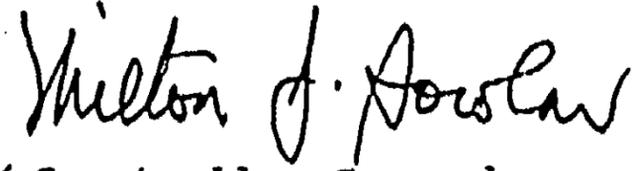
The Honorable Donald J. Mitchell
House of Representatives

Dear Mr. Mitchell:

We refer to your letter of November 17, 1981 on behalf of Utica Cutlery Company, in regard to the protest of Ontario Knife Company concerning solicitation No. 9FCC-OKX-A-A0495/81, issued by the General Services Administration.

We are enclosing a copy of our decision of today denying the protest, since the record indicates that the omission of Ontario Knife Company from the bidders mailing list was inadvertent, and that the solicitation generated adequate competition, resulting in reasonable prices.

Sincerely yours,

for 
Comptroller General
of the United States

Enclosure



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

B-205142

February 10, 1982

The Honorable Stanley N. Lundine
House of Representatives

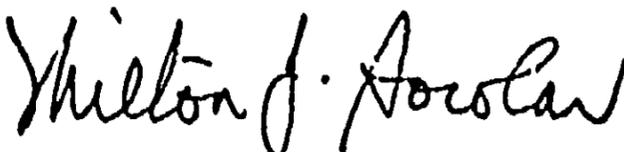
Dear Mr. Lundine:

We refer to your recent letters in regard to the protest of Ontario Knife Company concerning solicitation No. 9FCC-OKX-A-A00495/81 issued by the General Services Administration (GSA).

We are enclosing a copy of our decision of today denying the protest, since the record indicates that the omission of Ontario Knife Company from the bidders mailing list was inadvertent, and that the solicitation generated adequate competition resulting in reasonable prices. Although it is unfortunate that Ontario Knife Company did not have the opportunity to submit a bid, there is no basis for this Office to recommend that GSA not proceed to contract award on the original solicitation.

With regard to the eligibility for award of Young Associates, GSA has advised us that the firm's bid has been rejected in accordance with the agency's late bid rules. Therefore, this question has become academic. In any event, the issue of Young's small business size status would be decided by the Small Business Administration, not our Office.

Sincerely yours,

for 
Comptroller General
of the United States

Enclosure