

118620 PL-1
Hordell

DECISION



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

FILE: B-205728

DATE: June 7, 1982

MATTER OF: Wheeler Brothers, Inc.

DIGEST:

Since one of the mandates of the District of Columbia's Minority Contracting Act of 1977, as amended, is to overcome the effects of past discrimination by placing 25 percent of procurement contracts (measured in dollar volume), or other percentage as circumstances dictate, with minority business enterprises, a determination to restrict the procurement for minority business is permissible after issuance of the solicitation.

Wheeler Brothers, Inc. (Wheeler), the incumbent contractor, protests the Government of the District of Columbia's (District) amendment of invitation for bids (IFB) No. 0042-AA-29-O-2-MR, converting the procurement from one advertised in the open market to one designated for a sheltered market, that is, only minority bidders certified pursuant to the District's Minority Contracting Act of 1977, as amended, D.C. Code §§ 1-1141 through 1-1151, 1-1104, 1-1107 and 1-1110 (1981). The District awarded a contract, notwithstanding this protest, to WRW Auto Parts (WRW).

We deny the protest.

The IFB solicited a contractor to operate a District motor vehicle parts store on an unrestricted basis. Amendment No. 3 designated the procurement for certified minority bidders only. The District received two bids in response to this IFB--Wheeler, the low bidder, but a noncertified firm, and WRW, a certified firm.

It is Wheeler's position that amendment No. 3 is illegal because once a solicitation has been issued to the open market, it may not be designated for certified minority bidders participation. Wheeler, in support

of its argument, points to section 1-1142(7) of the D.C. Code, which defines sheltered market as "a process whereby contracts or subcontracts are designated, before solicitation of bids, for limited competition from minority business enterprises on a negotiated or competitive bid process." (Wheeler's emphasis.) In addition, Wheeler points out that its bid is about 10 percent lower than WRW's and submits that there is no potential bidder in the sheltered market and properly registered with the Minority Business Opportunity Commission (Commission), the overseer of minority participation in public contracting (see § 1-1143 of the D.C. Code), that can comply with the IFB's requirements. This will allegedly result in a relaxation of IFB requirements.

The act, which is remedial in nature, was promulgated "to overcome the effects of past discrimination in the allocation of contracts, and the financing and bonding of minority business enterprises." D.C. Code § 1-1141(6) (1981). We note that it is an accepted maxim of judicial construction that a remedial statute be liberally construed in order to carry out the remedial purpose for which it was enacted. See Pullen v. Otis Elevator Co., 292 F. Supp. 715 (N.D. Ga. 1968); In re Carlson, 292 F. Supp. 778 (C.D. Cal. 1968).

Under the act, the District is authorized to establish programs "designed to assist local minority contractors." D.C. Code 1-1147(a). One of these programs is a sheltered market approach whereby each agency of the District is to establish an annual program that places 25 percent of the dollar volume of its proposed contracts with certified local minority business enterprises. Each agency is required to submit to the Commission quarterly reports that provide total contract dollar volume awarded, the percentage awarded to minority enterprises, and how it plans to continue implementing its annual program. D. C. Code § 1-1146. The Commission, after review of each agency's plan and quarterly reports, is empowered to determine, where appropriate, which of an agency's contracts shall be reserved for the sheltered market program. However, if an agency has failed to meet its goal, the Commission shall reserve agency contracts for the sheltered market program to timely rectify that situation. D. C. Code § 1-1149(3).

We do not agree with Wheeler's interpretation of the act. As noted above, the sheltered market process is one "whereby contracts or subcontracts are designated, before solicitation of bids, for limited competition from minority enterprises." Our reading of this language is that a solicitation of bids must notify bidders before bids are solicited that a procurement has been designated a sheltered procurement. This does not mean that a procurement not restricted to minority enterprises as issued cannot legally be amended to include the restriction before bids are received. It would not be reasonable to interpret the requirement in this manner.

Accordingly, this aspect of the protest is denied.

The Commission determined that there is minority capability to perform this contract. Consequently, it directed that the solicitation be removed from the open market and placed in the sheltered market. The fact that only one bid was received does not necessarily mean that there was no competition or that the price was unreasonable. In any event, there is no requirement in the act that these awards be made under competitive circumstances. Also, the act does not preclude payment of a reasonable premium price to utilize minority business enterprises.

Finally, we find that Wheeler's last argument, relaxation of IFB standards, is also not supported by any evidence. The District awarded a contract to WRW under the IFB and amendments as issued. We are not aware of any relaxation of standards. However, whether WRW's performance complies with the established standards is a matter of contract administration which we do not review. See Tracor Marine, Inc., B-197260, June 23, 1980, 80-1 CPD 439.

Wheeler's protest is denied.

for Milton J. Arnold
Comptroller General
of the United States