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**DECISION**



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

**FILE:** B-205903.3

**DATE:** December 7, 1982

**MATTER OF:** Showcase Corporation--Reconsideration

**DIGEST:**

Prior decision which held that challenge of an agency's sole-source award was actually a challenge of the agency's pace at which it was taking steps to competitively solicit its requirements is affirmed, as the agency has already issued a competitive solicitation and the protester has raised no new facts or errors of law which would cause GAO to reverse its decision.

Showcase Corporation (Showcase) requests reconsideration of our earlier decision in Information Marketing, Inc., B-205903, May 25, 1982, 82-1 CPD 497. In that decision, we held that a challenge against the Defense Logistics Agency's (DLA) sole-source award for Microform Library Services to Information Handling Systems under contract No. DLA006-82-F-1000 was actually a challenge against DLA's pace at which it was taking steps to competitively procure the services in question.

We affirm our prior decision.

We note that Information Marketing was the agent for Showcase and apparently this relationship no longer exists. However, as Showcase produced the library services in question and Information Marketing was merely its agent, we consider Showcase to be the real party in interest for purposes of this reconsideration.

Showcase contends that our original decision was founded upon several misunderstandings and asserts that:

1. DLA misled this Office as to the complexity of the services in question, that these services are "shelf items," and that DLA raised the issue of complexity only to "cloud the issue \* \* \* of open competitive purchasing practices";
2. Information Marketing was not protesting prior awards, but only introduced such evidence to show a pattern of prior improper awards which were continued in fiscal year 1982;
3. The sole-source award in fiscal year 1982 was not supported by any written file justification as required by Federal Property Management Regulation § 101-26-408.3 and, consequently, this Office could not justify its position that DLA had made an appropriate determination justifying purchase of a higher price supplier;
4. Contrary to our statement in the original decision, Information Marketing did indeed provide our Office with a "factual reclama" to DLA's 1978 evaluation; and
5. Information Marketing, contrary to the indication in the original decision, had never requested a small business set-aside for the procurement, but had stated that DLA was required by law to give a qualified small business an opportunity to compete.

We find no misunderstanding on the issue of complexity. Although the Microform Library Services may be "shelf items," as we indicated in our original decision, DLA "has 22 activities which contract for thousands of diverse commodities and which administer military service contracts" and "maintains records for more than 600,000 items of Government-owned industrial plant equipment." We held that with such a "magnitude" of agency requirements, we saw no difficulty in allowing DLA sufficient time to develop "exact technical specifications \* \* \* which would fulfill the precise needs of all of the agency's field activities." We see no reason to alter our original position. The allegation that DLA has misled this Office is without foundation.

It was irrelevant to our ultimate conclusion whether Information Marketing was protesting prior fiscal year awards, because all this Office considered was the propriety of the fiscal year 1982 award.

Although DLA has admitted the unavailability of a written record, we feel that the Agency submitted sufficient evidence in the form of the contracting officer's "Report and Recommendation" to justify its award to the higher bidder. Further, as DLA concedes its 1978 evaluation, upon which the 1982 award was made, is no longer valid, the point is moot.

Whether or not Information Marketing provided our Office with a "factual reclama" is also moot, as the 1978 evaluation is no longer relied upon by DLA.

We indicated in our original decision that the Small Business Act, 15 U.S.C. § 631, et seq. (1976), did not mandate the award of a contract to a qualified small business and that a set-aside was discretionary with the contracting agency. We agree with Showcase that small businesses, such as Information Marketing, are entitled to compete for Government procurements even though not set aside for small business.

We noted at the conclusion of our original decision that:

"\* \* \* DLA still had a duty to seek competition, especially in view of its awareness of the existence of more than one FSS contract for the items. Relying for 3 years on the 1978 evaluation as a sole-source justification brings into question how actively DLA procurement personnel sought competition."

DLA issued a competitive solicitation for the balance of fiscal year 1982 on June 24, 1982.

Showcase has not raised any new facts or demonstrated any errors of law which would cause us to alter our prior decision. Dictaphone Corporation--Reconsideration, B-200695.2; B-200696.3, December 30, 1981, 81-2 CPD 511.

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Accordingly, we affirm our prior decision.

*for* *Milton J. Fowler*  
Comptroller General  
of the United States