

DECISION



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

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FILE: B-212347 **DATE:** December 6, 1983
MATTER OF: Multigraphics

DIGEST:

1. Protest against small business set-aside is denied since contracting officer reasonably anticipated receipt of offers from sufficient number of small businesses even though only one small business submitted bid.
2. Determination that small business bid is reasonable is not legally objectionable since bid is lower than bid submitted previous year by protester.

Multigraphics protests an award to Abcor Corporation under solicitation No. 263-83-B(89)-0107, a small business set-aside, issued by the National Institutes of Health (NIH). Multigraphics alleges that the set-aside was improper because it was unreasonable for NIH to expect that an adequate number of small businesses would submit bids. Further, Multigraphics notes that only one bid was actually received and questions the reasonableness of the bid price submitted by Abcor.

We deny the protest.

Federal Procurement Regulations § 1-1.706-5(a)(2) (1964 ed. amend. 192) provides that procurements shall be set aside for small business concerns if there is a reasonable expectation that offers will be obtained from a sufficient number of small business concerns and that award will be made at a reasonable price. The decision as to whether such an expectation exists is basically a business judgment within the broad discretion of the contracting officials. Accordingly, our review of challenges to set-aside decisions is generally limited to ascertaining whether there has been an abuse of discretion. Ingersoll-Rand, B-207005, April 12, 1982, 82-1 CPD 338.

The agency report indicates that, prior to the issuance of the solicitation, the contracting officer was aware of three small business firms that were considered capable of

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meeting the solicitation requirements. The procurement was synopsized in the Commerce Business Daily and two additional small business concerns responded with requests for the solicitation. Based on this record, we find that the contracting officer had a reasonable basis for concluding that there would be adequate competition. The fact that only one offer was received does not affect the propriety of the set-aside determination which was made prior to the issuance of the solicitation. Ling/L.A.B., subsidiary of Mechanical Technology, Inc., B-207414, October 15, 1982, 82-2 CPD 341.

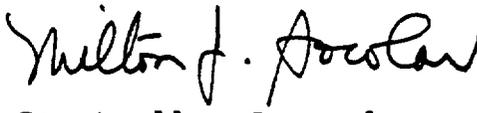
With respect to the reasonableness of the bid price received by NIH, we consistently have held that a determination concerning price reasonableness is a matter of administrative discretion that necessarily involves the exercise of business judgment. We will not question that determination unless it is clearly unreasonable or there is a showing of fraud or bad faith. Browning-Ferris Industries, B-209234, March 29, 1983, 83-1 CPD 323; Telex Communications, Inc., B-208382, August 17, 1982, 82-2 CPD 142.

NIH has indicated that the price quoted by Abcor should result in an annual savings over the price charged NIH the previous year by Multigraphics. As a consequence, NIH states that it has no reason to find that the bid price quoted by the Abcor is unreasonable. Multigraphics contends that it currently has a Federal Supply Schedule (FSS) contract with the General Services Administration at approximately 30 percent less than the price bid by Abcor. Multigraphics has offered to perform the NIH contract at the same price, although the firm did not actually submit a bid to the contracting officer.

In view of the Congressional policy favoring small businesses, a fair proportion of government contracts may be awarded to such firms, even at premium (albeit reasonable) prices. Canadian Commercial Corporation, B-196111, May 29, 1980, 80-1 CPD 369. For example, we have upheld a contracting officer's finding of reasonableness when a small business bid was 31 percent higher than a courtesy bid, but slightly more than one-half the government estimate. Id. Similarly, we have held that a small business bid was reasonable even though it was 43 percent higher than a courtesy bid in light of other factors. Id., citing Osmose Wood Preserving Company of America, Inc., B-192191, October 23, 1978, 78-2 CPD 294.

Here, the contracting officer determined that the bid submitted was reasonable and, in fact, should result in savings over the price charged NIH by Multigraphics the previous year. There has been no showing of fraud or bad faith nor does the record indicate that the determination is clearly unreasonable. Under these circumstances, we find no reason to disturb the contracting officer's finding despite an offer from Multigraphics to perform at a considerably lower price.

The protest is denied.

for 
Comptroller General
of the United States