DECISION

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

FILE: B-216190.2; B-216190.3 **DATE:** April 8, 1985

MATTER OF: Constructive Playthings; Lakeshore Curriculum Materials Company

DIGEST:

1. Procuring agency's decision to reopen negotiations with all offerors as a corrective measure when it failed to follow its policy with respect to multiple awards for federal supply schedule contract was proper where RFP permitted additional offers to be considered during specified month of the 2-year contract period.

2. To the extent that successful offerors under deficient procurement are objecting to the procuring agency making multiple awards, we find that the allegations are raised untimely because the RFP advised that the agency may make multiple awards and, consequently, objection should have been raised prior to the closing date for receipt of offers.

Constructive Playthings (CP) and Lakeshore Curriculum Materials Company (Lakeshore) protest the General Services Administration (GSA) reopening negotiations under request for proposals No. 10PN-NLS-0208, for athletic and recreational equipment for multiple award federal supply schedule (FSS) FSC Group 78.

We deny the protests.

The RFP was issued on August 8, 1983, for 12 special item numbers (SIN) and 18 subitems with a proposed 2-year contract period from January 1, 1984, to December 31, 1985. Five offers were received on SIN No. 192-35 for games and SIN 192-42 for toys and preschool aids. After conducting negotiations, GSA made award to CP and Lakeshore. Kaplan School Supply, an unsuccessful offeror, protested the procurement which led to a review of the procurement by GSA. GSA determined that the procurement violated its policy on negotiating multiple award FSS contracts. GSA

therefore reopened negotiations with all offerors and award has been withheld pending our decision.

CP and Lakeshore contend that GSA should not make award to all the offerors who competed under the solicitation. They believe that reopening negotiations will bring about a discount game where discounts offered become more important than the net price of the item being purchased. CP and Lakeshore also disagree with reopening negotiations because they offered GSA their lowest prices.

GSA reports that the review of the procurement led to a decision to reopen negotiations pursuant to clause 694 of the RFP, which provides that "additional offers will be considered during the eleventh month of the schedule period." GSA states that to the extent that the protesters are objecting to adding vendors to the schedule, the protest allegations are untimely, since the protesters were aware of clause 694 prior to the closing date for the receipt of offers. Moreover, GSA reports that its "Multiple Award Schedule Policy," dated October 1, 1982, provides that the government's goal is to obtain a discount from a firm's established catalog or commercial price list which is equal to or greater than the discount given to that firm's most favored customer. GSA states that the contracting officer did not follow agency policy and instead conducted negotiations based on the low net price for 50 randomly selected similar items.

GSA states that:

> "Although [the protesters] stated that [reopening negotiations] were unfair . . . [they have] not shown any prejudice to them. The protesters will be allowed to submit new offers and to raise their prices if desired. Since these are multiple award contracts, the possibility that the contractors will lose their contracts because of a subsequent reopening of negotiations is negligible, as long as prices are determined to be reasonable using the proper evaluation guidelines. Further, the reopening of negotiations to all offers would remove the prejudice to the other offerors whose offers were improperly evaluated and at the same time, allow the Government to maintain contract coverage for using agencies through the contractors currently on schedule."

We find nothing objectionable in GSA's decision to reopen negotiations with all offerors to assure that the procurement complies with GSA's policy on multiple award schedule contracts. After GSA reviewed the deficiencies in the procurement brought to its attention by Kaplan's protest, it acted within its authority since reopening negotiations under a deficient procurement is recognized as a legitimate method for correcting such a deficiency. See Orkand Corporation; Falcon Research and Development Company, B-209662.3, Apr. 4, 1983, 83-1 C.P.D. ¶ 349.

Although the protesters argue that there would have been no need to bid so low, if they had known everybody was eligible for award, we find that they were on notice that GSA could take such an action. In addition to clause 694, the RFP also specifically advised offerors that the "Government may make multiple awards to those responsible offerors whose offers conform to the RFP and are most advantageous." We conclude that the protesters should have been aware that GSA was intending to make multiple awards and we agree with GSA that any objection to making multiple awards should have been filed before the closing date to be timely. See 49 Fed. Reg. 49,419 (Dec. 20, 1984), to be codified at 4 C.F.R. part 21.

Finally, with respect to the argument that GSA is creating a discount game and disregarding net prices, we note that GSA's policy states that "the contracting officer is required to make an affirmative determination that the prices offered to the Government are fair and reasonable." The Administrator of GSA is vested by statute with the authority and responsibility for determining policy and methods of procurement and supply of personal property and nonpersonal services. 40 U.S.C. § 481 (1982). Accordingly, we find no basis to substitute our judgment for that of the Administrator in determining GSA's policy regarding multiple awards for FSS contracts. See M.S. Ginn Company, B-215579, Dec. 26, 1984, 84-2 C.P.D. ¶ 701.

The protest is denied.

for Harry R. Van Cleve
General Counsel