



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Techniarts Engineering

**File:** B-235994

**Date:** September 28, 1989

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## DIGEST

Where contracting officer refused to provide protester with solicitation for small purchase, small business set-aside, despite protester's repeated requests, protester was improperly excluded from the competition in violation of the Small Business Act and procurement statutes, which require that competition be obtained to the maximum extent practicable and that procuring agencies provide a copy of a solicitation to any small business concern upon request.

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## DECISION

Techniarts Engineering protests its exclusion from the competition under Department of Agriculture small purchase request for quotations (RFQ) No. 91333-0312, a total small business set-aside for videotape editing and post-production services. Techniarts contends that Agriculture improperly prevented Techniarts from quoting on the requirement. We sustain the protest.

Agriculture explains that it declined to furnish Techniarts with information on its planned oral solicitation for this requirement, despite repeated requests by the firm, for two reasons: (1) the Federal Acquisition Regulation (FAR) precludes award to previously successful bidders on contracts for similar services, and Techniarts was a prior contractor for similar services; and (2) Techniarts allegedly had an unfair business advantage because the firm had been advised of the project specifications in advance during telephone conversations with agency officials; allowing Techniarts to compete on this procurement thus would impinge on the government's procurement integrity. Agriculture proceeded to solicit price quotes from three previously unsuccessful bidders on its small business source list. Townhouse was the apparent low bidder at \$10,000. No award has been made pending our decision.

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Techniarts contends that Agriculture acted improperly in consciously and deliberately preventing the firm from submitting a quote on the procurement, and requests that the procurement be resolicited so that it may be afforded an opportunity to submit a quote. The protester also requests reimbursement of its costs of filing and pursuing the protest.

The small purchase procedures of the FAR set forth abbreviated competitive requirements designed to minimize administrative costs that otherwise might equal or exceed the cost of relatively inexpensive items. The Regulation provides that, generally, the solicitation of three suppliers may be considered to promote competition to the maximum extent practicable. FAR § 13.106; Gateway Cable Co., B-223157 et al., Sept. 22, 1986, 86-2 CPD ¶ 333.

The solicitation of three or more suppliers, however, does not automatically satisfy the maximum practicable competition standard. In procurements expected to exceed \$10,000, such as the present procurement (the government's estimate was \$10,500), an agency is required to publish notice of the intended procurement in the Commerce Business Daily and make available to any business concern requesting it a complete solicitation package. 41 U.S.C. § 416 (Supp. IV 1986). Further, the Small Business Act, as amended, 15 U.S.C. § 637(b) (1982), expressly requires that procuring agencies provide a copy of a solicitation to any small business concern upon request; Techniarts apparently is a small business. Gateway Cable Co., B-223157 et al., supra. The procurement statutes and the Small Business Act obviously contemplate that, regardless of whether three suppliers are solicited, responsible sources requesting a copy of the solicitation and the opportunity to compete should be afforded a reasonable opportunity to do so. An agency therefore must make reasonable efforts, consistent with efficiency and economy, to give a responsible source the opportunity to compete, and cannot unreasonably exclude a small business concern from competing for an award. See California Properties, Inc., B-232323, Dec. 12, 1988, 88-2 CPD ¶ 581.

We find that Agriculture improperly failed to afford Techniarts an opportunity to compete for this requirement in accordance with the above standard. Even though Agriculture ultimately solicited three suppliers, the agency's refusal to provide Techniarts with procurement information at the firm's specific request was contrary to the standard under the Small Business Act and procurement statutes.

The agency's explanation notwithstanding, we fail to see how advance knowledge of the project's specifications could have given Techniarts any unfair competitive advantage; presumably all the solicited firms were advised of the same requirements in being asked for their price quotes. There is no indication or reason to believe that the videotape editing services here were of such a technical nature that advance knowledge could give a firm a significant advantage in developing a price quote. Similarly, we are aware of no statutory or regulatory basis for Agriculture's unsubstantiated position that contracting officers may solicit price quotations on small purchase procurements only from previously unsuccessful bidders, to the exclusion of prior contractors. This position is inconsistent with the requirement, referenced above, that any small business so requesting be furnished with a copy of a solicitation.

We conclude that Agriculture improperly excluded Techniarts from competing for this award. By letter of today to the Secretary, we are recommending that Agriculture cancel the solicitation and resolicit quotations to give Techniarts a fair opportunity to compete. We also find Techniarts entitled to recover its costs of filing and pursuing this protest. See 4 C.F.R. § 21.6(d) (1989).

The protest is sustained.

*for*   
Comptroller General  
of the United States