

13482 *Lebanon Proc II*



DECISION

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

FILE: B-195830.2

DATE: April 21, 1980

MATTER OF: Security Assistance Forces and
Equipment OHG--Reconsideration

D 1388

DIGEST:

D 3884

1. Unwarranted exclusion of protester from competition would be improper; however, agency decision not to solicit protester for small purchase conforms with regulatory preference to solicit firms in locality of purchasing activity.
2. There is no basis to reconsider prior decision where protester does not allege error of fact or law.

Security Assistance Forces and Equipment OHG (SAFE) ask us to reconsider our decision Security Assistance Forces and Equipment OHG, B-195830, February 8, 1980, 80-1 CPD _____. We denied SAFE's protest that it was not solicited by the United States Army Procuring Agency, Europe, Grafenwoehr Purchasing Office, under a request for quotations for installation of smoke detectors.

In our decision, we noted that the purchasing office had solicited three suppliers located in the immediate vicinity of the purchasing office and awarded a purchase order to the firm offering the lowest quote. We stated that the agency's decision not to solicit SAFE, which is located relatively far from the purchasing office, conformed with the regulatory preference for soliciting sources in the local trade area of either the purchasing or the receiving activity. See Defense Acquisition Regulation § 3-604.2.

[Request for Reconsideration]

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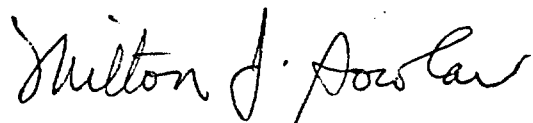
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Our decision noted the broad discretion given contracting officers with respect to small purchases in determining the best interests of the Government, and also that previous contracts had been awarded to SAFE. As there was no evidence of bad faith on the part of the contracting activity, we found no objection to the agency's decision not to solicit SAFE.

SAFE has expressed concern that our decision might be construed to permit the agency to deliberately exclude SAFE from future procurements without a reasonable basis. In this regard, SAFE reiterates its belief that the agency is motivated by bad faith and is using the regulatory preference for soliciting local sources to disguise its improper intentions. Our decision does not condone improper agency action; we held simply that the exclusion of SAFE from the small purchase in question was not illegal upon the record before us. Moreover, we have been advised that the Army has recently concluded an investigation into SAFE's allegations and has found no evidence of improper procurement action.

It is not our practice to conduct independent investigations of alleged facts to establish whether a protester's statements are valid. Bowman Enterprises, Inc., B-194015, February 16, 1979, 79-1 CPD 121. Rather, the protester has the affirmative burden of proving its case. M&H Manufacturing Co., Inc. B-191950, August 18, 1978, 78-2 CPD 129. Since the protester has not established any errors of fact or law in our original decision and in view of the results of the Army's investigation, we find no basis for reconsidering the matter. Eglen Hovercraft, Incorporated--Reconsideration, B-193050, March 14, 1979, 79-1 CPD 179.

Lastly, since we are unable to conclude that the agency's action was illegal, we can find no basis for SAFE's new contention that the agency violated its "civil rights."



Acting Comptroller General
of the United States