

**DECISION**

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

FILE: B-180759

DATE: November 15, 1976

MATTER OF: General Electric Company

**DIGEST:**

1. Protest by large business concern against total small business set-aside is denied where contracting officer had reasonable basis to expect that receipt of offers from two small businesses would produce reasonable prices, which were offered in light of fact that unsolicited unit price quoted by large business is only \$0.06 less than original price of low small business offeror and is not less than "best and final" prices and large business has not claimed that it would offer "substantially" lower price.
2. ASPR § 1-706.1(e)(iii) (1975 ed.), which provides that total small business set-aside shall not be authorized when the products of one or more large businesses are on qualified products list, unless it has been confirmed that none of large businesses desires to participate, is not applicable to item being procured under source control drawing.
3. Neither ASPR nor Eld Protest Procedures precluded contracting officer from requesting "best and final" offers while protest was pending in GAO.

The General Electric Company, Electronic Components Business Division (GE), protests the total small business set-aside of request for proposals (RFP) SBSA N00383-76-R-1689 issued by the Department of the Navy, Aviation Supply Office, Philadelphia, Pennsylvania. The RFP solicited proposals for the furnishing of tuned cavity to be in accordance with Honeywell, Inc., Government and Aeronautical Products Division Drawing 968958-1 and all details and specifications listed therein.

Trak Microwave Corporation and MCL, Inc., both of which are small business concerns, and GE, a large business, in the past have supplied the Government tuned cavities manufactured to the Honeywell drawing and specifications. The contracting officer states that because neither the Honeywell data cited in the RFP nor comparable MCL, Trak Microwave or GE data was available to the Government, the RFP was restricted to previous producers. Further, since Trak Microwave and MCL are small business concerns

and since it was considered that solicitation of only these two concerns was sufficient to assure the award of a contract at reasonable prices because past competitive solicitations resulted in awards to both, the contracting officer decided to set aside the total procurement for small business pursuant to Armed Services Procurement Regulation (ASPR) § 1-706.5(a)(1) (1975 ed.).

Both small businesses responded to the RFP. Also, GE submitted a timely unsolicited proposal. The prices initially proposed for the stepladder quantities in item 0001 were as follows:

	0001AE <u>85 ea</u>	0001AD <u>129 ea</u>	0001AC <u>171 ea</u>	0001AB <u>213 ea</u>	0001AA <u>251 ea</u>
GE	\$182.89	\$182.89	\$182.89	\$182.89	\$182.89
MCL	204.95	192.75	182.95	179.15	178.05
Trak Microwave	214.00	205.00	205.00	196.00	192.00

GE referred to the General Electric Company decision, B-185698, May 12, 1976, 76-1 CPD 315, and contended that it should be considered for award under the RFP if it submitted the lowest price. However, a request for "best and final" offers was sent only to MCL and Trak Microwave. GE was not requested to submit a "best and final" offer since it was not eligible for award under the RFP which was restricted to small business. The revised prices received for 171 units, the quantity upon which the contracting officer apparently proposed to make an award, were as follows:


	<u>Unit Price</u>	<u>Total</u>
MCL	\$175.00	\$29,925.00
Trak Microwave	179.80	30,745.80

GE contends that the subject procurement and all future similar procurements involving GE, MCL and Trak Microwave on Honeywell source control drawings should be based on competitive pricing by all three qualified sources and not restricted to small business. GE further states that its protest is based on the premise that the qualified product list for the item under protest is Honeywell drawing number 968958-1 and that GE is a qualified supplier and should be solicited for quotations. GE also contends that the request for "best and final" prices prior to a decision on its protest by our Office was improper. GE refers to our earlier decision cited above wherein it protested against another small business set-aside. Although the GE protest was denied, it was stated in part:

"\* \* \* Therefore, while we recognize that ASPR 1-706.5(a)(1) authorizes a total small business set-aside only 'where the contracting officer determines that there is a reasonable expectation that offers will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices,' we believe that when a source-restricted item is being procured, contracting agencies must be particularly sensitive to the possibility that competition will be unduly restricted if the procurement is also totally set aside for small business."

However, we conclude in the immediate case, as we did in the cited decision, that there was no abuse of discretion in setting the procurement aside for small business. This is because there was a reasonable basis for the contracting officer to expect that the receipt of offers from the two small businesses would produce reasonable prices, which were offered in light of the fact that the price quoted by GE initially for 171 units is only \$0.06 a unit less than the MCL original unit price and is not less than the "best and final" prices. Further, GE has not claimed that it would offer a "substantially" lower price. Also, as indicated in the cited decision, the item being procured under a source control drawing is not a qualified product list item. Therefore, ASPR § 1-706.1(e)(iii) (1975 ed.), which provides that a total small business set-aside shall not be authorized when the products of one or more large businesses are on a qualified products list, unless it has been confirmed that none of the large businesses desires to participate in the procurement, is not applicable. In addition, there is nothing in ASPR or the Bid Protest Procedures, 4 C.F.R. part 20 (1976), which precluded the contracting officer from requesting "best and final" offers while the protest was pending in our Office.

Accordingly, the protest is denied.

  
Acting Comptroller General  
of the United States