

**DECISION**

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

FILE: B-190972

DATE: May 19, 1978

MATTER OF: North American Signal Company

**DIGEST:**

1. Determination of unreasonableness of price of small business bid, based upon comparison with prices received on prior procurement and projected inflation rate for item using wholesale price index, involves no impropriety on part of contracting officer. No legal basis exists to object to cancellation and resolicitation on unrestricted basis.
2. In considering reasonableness of bid submitted by small business on small business set-aside, comparison with contract price from large business on previous procurement for same item is proper.

North American Signal Company (North American), a small business, protests both the cancellation of Invitation for Bids (IFB) DSA400-77-B-4147, a small business set-aside issued by the Defense Logistics Agency (DLA), and the resolicitation on an unrestricted basis.

The IFB, a total small business set-aside with a portion of the procurement set-aside for small business-labor surplus area concerns, represents a requirements contract for an estimated quantity of 1000 electronic sirens. Five bids were received from small business concerns with North American as the low responsive responsible bidder at \$137.49 per unit (evaluated price including discount is \$136.80). Pursuant to Armed Services Procurement Regulation (ASPR) §§ 1-706.3(a) and 2-404.1(b)(vi) (1976 ed.) the contracting officer withdrew the set-aside and cancelled the IFB because he determined that all bids received were at

unreasonable prices. Inasmuch as North American is a labor surplus area concern, the firm was in line for award of the entire estimated quantity. DLA has resolicited this procurement for a smaller quantity on an unrestricted basis.

In making the determination to cancel the IFB, the contracting officer examined the procurement history for this item since March 1977. Previous procurements had been partially set aside for labor surplus area concerns with the remainder of each procurement unrestricted. The instant IFB was the first solicitation set aside for exclusive small business participation. An examination of the procurement history by the contracting officer revealed the following:

<u>Contractor</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Award Date</u>
Federal Signal Corp. (large business)	125	117.90	15 AUG 77
NASC (North American)	125*	117.90	15 SEP 77
Federal Signal Corp.	242	114.23	10 MAR 77
NASC	242*	114.23	31 MAR 77

\*Labor Surplus Area Set-Aside Portion. Actual price bid by North American for set-aside was \$133.06. Procurement regulation permits award of partial set-asides to eligible firms at prices not higher than those awarded under the nonset-aside portion.

North American's bid price in this case of \$137.49 is approximately 16.6 percent higher than \$117.90, the price offered by the large business on the most recent procurement for this item. Furthermore, using the Wholesale Price Index classification "Electronic Components & Accessories", the agency's price analysis

branch concluded that North American's bid price was far in excess of the 5 percent inflation rate for this item. In this regard, the agency states that the Wholesale Price Index classification suggested by North American, Producer Furnished Goods, covers all types of items and is considered too broad since a more specific index is available. Further, the agency reports that the 5 percent inflation rate was applied to a unit price (not just one material component) and in effect applied to all material, labor, overheads and profit. Moreover, in view of the anticipated quantity of 1000 units for this procurement as opposed to 250 units under the most recent solicitation, the price analysis branch concluded that a premium price of \$19,500 would be paid if an award was made at North American's bid price. Based on this information, the contracting officer withdrew the set aside and canceled the IFB.

The purpose of the Small Business Act, 15 U.S.C. § 631 (1970), is "to insure a fair proportion of the total purchases \* \* \* for the Government be placed with small business enterprises \* \* \*." We have interpreted this provision to mean that the Government may pay a premium price to small business firms on restricted procurements to implement this policy. 53 Comp. Gen. 307 (1973); 41 Comp. Gen. 306 (1961). Although an award can be made on a small business set-aside at a price above that obtainable on the open market from large business firms, an excessive and unreasonable price may not be paid. Society Brand, Inc. et al, 55 Comp. Gen. 475 (1975), 75-2 CPD 327. Pursuant to ASPR § 1-706.3 the withdrawal of a set-aside based upon a proper determination that bid prices received from small business concerns are unreasonable \* \* \* represents a valid exercise of the authority of a contracting agency. B-149889, November 2, 1962.

In light of the above discussion, the only issue for our consideration is the reasonableness of the determination that North American's bid price was excessive. Berlitz School of Language, B-184296, November 28, 1975, 75-2 CPD 350.

North American questions the determination made by the contracting officer regarding its bid price of \$137.49. It points out that Federal Signal Corporation, the successful large business bidder on the 1977 solicitations, submitted the low bid price of \$134.25 in 1975. North American also states that Federal submitted bids of \$130.35 (third low bid) and \$130.85 on solicitations for this item issued in April and July of 1976 respectively. Consequently, North American argues that its bid price of \$137.49 is in line with bid prices submitted by large business on prior solicitations. North American also contends that its bid price should be compared with other small business bids and "not on a selected purchase price from a large business." In addition, North American has submitted its pricing data and that of Federal Signal Corporation in an effort to show that its price is reasonable and substantially below the prices both firms offer their distributors.

While we believe that a review of the procurement history over the last three years would have revealed a more complete indication of price trends for this item and that pricing data may provide a rough guide to the procuring agency, we are of the view the contracting officer reasonably concluded that the 16 percent price differential over 1977 prices rendered North American's bid price excessive. The contracting officer's determination may be based on the previous procurement price paid by the procuring agency. B-164377, July 26, 1968; B-164735, October 4, 1968. In 37 Comp. Gen. 147, our Office upheld the withdrawal of a small business setaside when the small business bid was approximately 10 percent higher than the previous procurement for the item. Also see B-164735, supra, where the questioned bid price was 16 percent higher than the previous procurement price paid by the procuring agency. Therefore, a comparison with the much lower bid prices received in 1977 is not subject to criticism.

We note that Federal Signal Corporation's bid prices for the 1975 and 1976 procurements included military packaging for which the contractor charged

approximately \$14.00. Therefore, Federal's bid prices for these procurements are substantially lower than those indicated. Furthermore, the fact that the previous awardee was a large business is irrelevant. G.S.E. Dynamics, Inc., B-189329, February 15, 1978, 78-1 CPD 127. We have repeatedly stated that bids submitted by large businesses on past procurements may be used in making price determinations on future procurements of the same or similar items. B-164735, October 4, 1968; Cf. Tufco Industries, Inc., B-189523, July 13, 1977, 77-2 CPD 21.

North American also has objected to the agency's extrapolation of a reasonable bid price based on an estimated quantity of 1000. However, the agency states that it has purchased 734 units from March through September 1977, a six month period. Therefore, we cannot conclude that the agency acted unreasonably in this regard.

The protest is denied.

Deputy

*V. F. Kitten*  
Comptroller General  
of the United States