

DECISION



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

119216

FILE: B-206382

DATE: August 17, 1982

MATTER OF: Telex Communications, Inc.

DIGEST:

1. GAO will not consider an allegation that a firm is not a small business eligible for a set-aside award since the conclusive authority to decide matters concerning a small business's size status is vested in the Small Business Administration.
2. The determination of price reasonableness is a matter of administrative discretion that necessarily involves the exercise of a business judgment by the contracting officer. A protester's conjecture that a contracting officer lacks a basis to make that determination because of the limited competition available in a small business set-aside will not be considered since there is no showing that the contracting officer's decision is unreasonable or that fraud or bad faith are involved in the decision.

Telex Communications, Inc., protests any award of a contract to DHV, Inc., under solicitation No. N00039-82-R-0246(Q), issued as a total small business set-aside by the Department of the Navy. Telex contends that DHV is the dominant manufacturer of high frequency rotatable log periodic antenna systems--the subject of the solicitation--and therefore is not a small business for purposes of the procurement. Furthermore, Telex argues that if DHV is determined not to be a small business and thus is eliminated from the competition, negotiation with the one remaining offeror on a noncompetitive basis would result. We dismiss the protest.

In order to rule on DHV's eligibility to compete for and ultimately receive award under this total small business set-aside, we necessarily would have to consider whether that firm is in fact a small business under the size standard applicable to the procurement. As we have stated in numerous prior decisions, our Office is not empowered to make such determinations. Rather, under 15 U.S.C. § 637(b) (6) (1976), the Small Business Administration has conclusive authority to determine matters of small business size status for procurement purposes. Therefore, we will not consider whether DHV qualifies for award as a small business. Industrial Lease, Inc. of Fayetteville, B-204446, August 3, 1981, 81-2 CPD 191.

Telex speculates that, even if DHV is determined to be a small business, the prices offered by DHV and one other firm "differ, in all likelihood, by a substantial amount" and therefore fail to provide the contracting officer with an adequate basis for determining the price reasonableness of the offers. In Telex's view, the contracting officer thus has no basis for determining if either of the small business offers in the present procurement are reasonable and competitive "with the current industry market."

The same allegation obviously can be made in any procurement in which the competition is necessarily limited because of the establishment of a set-aside or the nature of the product that is being acquired. We consistently have held, however, that a determination concerning price reasonableness is a matter of administrative discretion that necessarily involves the exercise of business judgment by the contracting officer. We will not question that determination unless it is clearly unreasonable or there is a showing of fraud or bad faith. Honolulu Disposal Service, Inc.--Reconsideration, B-200753.2, August 12, 1981, 81-2 CPD 126.

Telex's assertion is no more than speculation on its part; it apparently does not know what prices were offered, how these prices compare with the procurement history of this item, or what other judgments may be involved in the determination to award or not award the contract. In short, there is nothing to substantiate Telex's conjecture, and we will not, therefore, consider this a valid basis for protest. See Kurz-Kasch, Inc., B-192604, September 8, 1978, 78-2 CPD 181.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel