

DECISION



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

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FILE: B-208614

DATE: February 28, 1983

MATTER OF: National Association of Aircraft and
Communication Suppliers, Inc.

DIGEST:

There is no statutory or regulatory requirement for an agency to post its proposed purchase orders to enable public inspection. Accordingly, a change in an agency's policy, from that of posting those orders to not posting them, is not improper.

The National Association of Aircraft and Communication Suppliers, Inc. (Association), protests the Department of the Air Force's (Air Force), San Antonio Air Logistics Center, Kelly Air Force Base (AFB) failure to make available for public inspection (post) proposed purchase orders estimated not to exceed \$2,500. Specifically, the Association, a group of small business aircraft parts suppliers which regularly does business with the Air Force, lists nine such purchase requests.

We deny the protest.

The Association states that in the past Kelly AFB's policy was to post all proposed purchase order requests. This information was further distributed by local bidders, bidders with local representatives and at least one commercial bidding service. Now, however, the policy has been terminated and purchase orders estimated not to exceed \$2,500 are no longer being posted at Kelly AFB since it is not considered cost effective in view of the administrative costs involved. The Association contends that its members are unable to compete for those orders withdrawn from public display. Moreover, the Association believes that if its members competed for those orders, the Government would save about 30 to 40 percent of the sole-source price.

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It is the Association's position that Kelly AFB's new policy violates the access to procurement information section of the Small Business Act, as amended. Specifically, the Association cites section 223 of that act, 15 U.S.C. § 637(b) (1976), as amended by Pub. L. 95-507, October 24, 1978, 92 Stat. 1757, which provides that for any contract to be let by any Federal agency a small business concern upon its request shall be provided with a copy of bid sets and specifications concerning a particular contract. It is contended that Kelly AFB's refusal to post the purchase orders prevents the Association's members from requesting the bid sets and specifications concerning those purchase orders since their existence is concealed from the public. Furthermore, the Association submits that Kelly AFB's policy violates section 221 of the act, 15 U.S.C. § 644(j), which provides that contracts for goods and services subject to small purchase procedures and estimated not to exceed \$10,000 "shall be reserved exclusively for small business concerns" except where the agency cannot obtain competitive offers from two or more small businesses. The Association speculates that the elimination of the posting procedure will result in a significant decrease in the number of set-aside procurements.

The Association also argues that Kelly AFB's new policy violates the requirement that an agency's procurements be "made on a competitive basis to the maximum practical extent." See Armed Services Procurement Act (ASPA), 10 U.S.C. §§ 2304(g) and 2305 (1976); Defense Acquisition Regulation (DAR) § 1-300.1 (1976 ed.); DAR § 3-101(d) (1976 ed.). It is the Association's belief that this requirement cannot be satisfied unless there is a public display of the purchase orders. In addition, the Association contends that the new policy improperly denies access to public records and therefore violates the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq. (1976, Supp. IV, 1980). The Association points to DAR § 1-329 (Defense Acquisition Circular (DAC) No. 76-35, April 30, 1982), "information is to be made available to the public," and DAR § 1-1004.1(b) (DAC No. 76-18, March 12, 1979), "Maximum information may be made available to the public * * *," to support this argument. It is also the Association's position that the posting of the purchase order solicitations is cost effective.

The Association stresses that its position should be sustained in spite of the fact that DAR § 1-1002.4 (DAC No. 76-40, November 26, 1982), provides the following:

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"A copy of each solicitation for an unclassified procurement in excess of \$5000¹ which provides at least ten calendar days for submission of offers shall be displayed at the contracting office, and, if appropriate, at some additional public place from the date issued until seven days after bids or proposals have been opened."

It is the Association's contention that since this regulation was promulgated prior to the Small Business Act, it should not govern this situation. Rather, the Small Business Act, FOIA and ASPA should govern and DAR § 1-1002.4, supra, should be amended to be consistent with these acts.

In addition, the Association has cited decisions of our Office and various regulations concerning the need for full and free competition and alleges that Kelly AFB's current policy thwarts the requirement for competition.

We are not persuaded by the Association's position.

The Air Force advises that it conducted a statistical study at Kelly AFB, involving 2,300 solicitations, to evaluate the effectiveness of posting procedures and found, from an economic standpoint, that posting did not produce benefits (cost savings) when compared to the work (expenditure of man-hours) involved in posting the purchase orders. This study revealed that only 25 proposals were received from unsolicited sources and only one of those proposals was accepted by the Air Force. We have been advised that the resultant savings was \$28.64. In addition, the Air Force explains that a major portion of the man-hours expended for the posting of purchase orders involves the removal of all references to price from the documents provided by the using activity. Then these documents are given to administrative personnel for the actual posting.

While the Association questions the extent of the study and the results and cites a few examples of unposted solicitations that became available to one of its members, who eventually received the award (at a savings to the Air

¹At the time this protest was filed, this amount was \$2,500 and the Kelly AFB policy was not to post purchase orders under \$2,500. We are not aware of any change in Kelly AFB's policy as a result of this DAR change.

Force), we do not find that Kelly AFB lacked a reasonable basis for changing its posting procedures because they were not cost effective. Our conclusion is not affected by the fact that the Air Force study did not include both buying divisions at Kelly AFB since the study appears to be representative of the type of procurements at Kelly AFB.

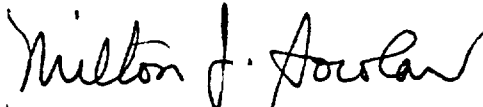
The Air Force cites DAR § 1-1002.4, supra, as support for its decision not to post purchase orders that do not exceed \$2,500. That section requires posting of a solicitation for an unclassified procurement in excess of \$5,000. Since the Air Force policy only applies to purchase orders estimated not to exceed \$2,500, that policy is not inconsistent with the regulation.

The Air Force also points out that under part 6, section III, of DAR, there is small purchase authority which recognizes certain restrictions on competition in the interest of reducing administrative costs. See DAR § 3-601.

Our Office does not take issue with the general propositions of law cited by the Association. However, we do not agree with the Association's interpretation of the applicability of these general propositions to the present situation. We have reviewed the laws cited above and do not find that any specifically require the posting of purchase orders. For example, we have held that Pub. L. No. 95-507, supra, only becomes operative when a small business concern requests information and the agency refuses. Alpha Carpet & Upholstery Cleaners, Inc., B-200944, February 5, 1981, 81-1 CPD 69.

Nevertheless, the Air Force must comply with the basic requirements that procurements "be made on a competitive basis to the maximum practicable extent." See DAR § 1-300.1, supra. This means that sufficient competition to insure reasonable prices must be obtained, bidders may not be deliberately or consciously excluded from bidding and procurements must be publicized where required. See DAR section I, part 10, and DAR § 2-205, concerning bidders mailing lists.

The protest is denied.

for 
Comptroller General
of the United States