

DECISION

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

26863

FILE: B-213457**DATE:** November 21, 1983**MATTER OF:** Sun Valley Nuclear**DIGEST:**

1. The decision whether a particular procurement should be set aside for small business essentially is one within the discretion of the contracting activity.
2. Allegation regarding possible violation of antitrust laws is for consideration by the Department of Justice, not GAO.

Sun Valley Nuclear (Sun Valley) protests the award of a contract to Siemens Corporation (Siemens), the only other bidder under invitation for bids (IFB) No. 644-15-83, issued by the Veterans Administration Medical Center, Phoenix, Arizona. Sun Valley alleges that because Siemens is a large multinational corporation, it is able to underbid small business concerns such as Sun Valley and eliminate competition.

To the extent that Sun Valley is requesting protection from competition from large business, we point out that, with certain exceptions, not alleged here, there is nothing in the Small Business Act, 15 U.S.C. § 644 (1982), or in the procurement regulations which makes it mandatory that any particular procurement be set aside for small businesses. While it is the government's policy that a fair proportion of purchases be placed with small business concerns, the decision whether a particular procurement should be set aside for small businesses essentially is one within the discretion of the contracting activity. Educational Technology and Services, Inc., B-211231, April 22, 1983, 83-1 CPD 449. Here, the fact that only one small business bid was received in response to the IFB confirms the procuring activity's decision not to restrict this procurement.

Further, our Office does not consider allegations of antitrust violations. Thus, to the extent that Sun Valley is alleging that Siemens is engaged in monopolistic practices by the submission of a below-cost bid, any evidence of the above should be referred to the Department of Justice.

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Barrier Industries, Inc., B-210050, January 6, 1983, 83-1
CPD 11; Flight Refueling, Inc., B-207980, July 13, 1982,
82-2 CPD 48.

Protest dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel