

DECISION

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

FILE: B-213528

DATE: February 28, 1984

MATTER OF: Wilde Tool Co., Inc.

DIGEST:

1. No legal authority exists to extend a Department of Defense (DOD) appropriations restriction on total labor surplus area set-asides to a General Services Administration (GSA) purchase of pliers, even though DOD is the major user of the pliers, where GSA is purchasing the pliers with its own appropriations.
2. Protest allegation that a DOD appropriations restriction was applied to a GSA procurement while another DOD appropriations restriction was not applied and, thus, the latter restriction should have been is without merit where the terms of the solicitation indicate that neither restriction was applied to the procurement.

Wilde Tool Co., Inc. (Wilde), protests the total labor surplus area (LSA) set-aside of bid item No. 2 under invitation for bids (IFB) No. FEN-ED-A3134-A-10-28-83, issued by the General Services Administration (GSA) for pliers.

We deny the protest.

Wilde argues that the provisions of section 723 of the Department of Defense (DOD) Appropriation Act, act of December 22, 1982, Pub. L. 97-377, 96 Stat. 1830, concerning the prohibition against award of contracts made for the purpose of relieving economic dislocations if the price differential exceeds 2.2 percent, applied to this procurement. It is alleged that the IFB acknowledged DOD as the predominant user of the pliers and, therefore, GSA illegally conducted a total LSA set-aside on the particular bid item by not permitting non-LSA concerns to bid. Wilde also asserts that other provisions of section 723 prohibiting the procurement of foreign-made hand and measuring tools were applied to this procurement, and that, accordingly, the provisions of section 723 prohibiting total LSA set-asides also should have applied.

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GSA responds that it conducted the instant IFB pursuant to its authority under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 481 (Supp. III, 1979), to procure property and services on behalf of federal agencies. GSA states that procurements conducted under its own statutory authority are not subject to statutory limitations applicable to DOD, citing our decisions in 48 Comp. Gen. 403 (1968) and Procurement of Stainless Steel Flatware, B-186422, October 26, 1976, 76-2 CPD 364. GSA also asserts that no statutory authority in its appropriations exists by which GSA could implement restrictions imposed upon DOD with regard to price differentials for purposes of relieving economic dislocation. GSA further alleges that, while it restricted the procurement to domestic suppliers of hand and measuring tools, provisions contained in GSA's appropriations required GSA to give a preference to domestic suppliers of hand and measuring tools in accordance with Defense Acquisition Regulation § 6-104.4(b) (1976 ed.). GSA thus claims that the provisions of section 723 prohibiting the procurement of hand and measuring tools were not in fact applied to this procurement.

In 48 Comp. Gen. 403 (1968), Procurement of Stainless Steel Flatware, supra, and Idealspaten, GmbH, B-205323, April 27, 1982, 82-1 CPD 389, we held that, even where DOD is the major user of the product to be procured by GSA, the expenditure of GSA appropriations warrants the application of GSA's own procurement procedures and constraints and that, therefore, no legal basis exists upon which to extend DOD's appropriations restriction to a GSA purchase with GSA appropriations.

We find that the reasoning in these cases applies here. While direct DOD purchases may be subject to the prohibition in DOD's appropriations against total LSA set-asides, the record indicates that the purchase here obligated GSA's own appropriations--and Wilde does not allege otherwise--and, thus, GSA was not prohibited by the DOD appropriations restriction from conducting a total LSA set-aside.

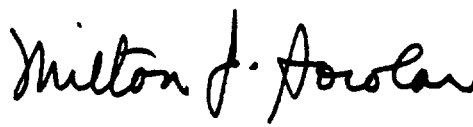
As to Wilde's allegation that the provision of section 723 prohibiting the procurement of foreign-made hand and measuring tools was applied to this procurement, we note that the terms of the IFB indicate that the 1979 GSA

appropriations statute, act of September 29, 1979, Pub. L. 96-74, § 505, 93 Stat. 573, extended most recently as concerns this protest by act of December 21, 1982, Pub. L. No. 97-377, 96 Stat. 1830, was applicable to this procurement. That section provides:

"No part of any procurement contained in this Act shall be available for the procurement of . . . any hand or measuring tool(s) not produced in the United States . . . except in accordance with procedures prescribed by [DAR § 6-104.4(b)]."

Accordingly, we cannot agree with Wilde that the provisions of section 723 prohibiting the procurement of foreign-made hand and measuring tools applied to this procurement.

We deny the protest.

for 
Comptroller General
of the United States