



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-219837

October 15, 1985

RELEASED

The Honorable Jerry Lewis
House of Representatives

Dear Mr. Lewis:

This is in response to your letter of July 30, 1985, concerning the conduct of solicitation No. DLA100-85-B-0778 for canteen cups by the Defense Personnel Support Center (DPSC), Defense Logistics Agency (DLA), Philadelphia, Pennsylvania. We previously forwarded to your office a copy of our decision of August 30, 1985, on the protest of Pacific Fabrication regarding this procurement.

In your letter you posed four questions concerning DPSC's practices in determining that this procurement should be a partial small business set-aside. The questions and our responses thereto are as follows:

(1) Did the contracting officer for this particular contract consider a small business set-aside designation (Federal Acquisition Regulation (FAR) § 19.502) before placing it in a priority 2 status?

Response: DLA advises us that they did consider making this procurement a total small business set-aside. However, there was a large business "planned producer" which expressed a desire to supply some of the canteen cups which are an "industrial readiness planning program" product. This program is intended to allow maintenance of an industrial mobilization base of qualified firms to produce products essential to the

national defense in an emergency situation. Consequently, FAR § 19.502-5(b)(1984), provides that procurements of such products should not be totally set-aside for small business in these circumstances.

(2) Would a small business set-aside have superceded any regulations and/or codes which now allow countries with special trade status to bid on defense contracts on an equal footing with American companies?

Response: A small business set-aside would preclude any foreign competition. Since this procurement was a partial small-business set-aside, foreign bidders are only eligible for the portion of the procurement not set-aside for small business.

(3) How did the "planned emergency producer" whose desire to bid on this contract brought about the priority 2 designation, learn of the solicitation? Did the "planned emergency producer" initiate contact with the contracting agency in this particular instance, or vice versa?

Response: DLA advises that the DPSC initiated contact with the large business planned producer. DLA's actions in this regard are in accordance with the goals of the industrial readiness planning program to maintain an emergency mobilization base.

(4) If a total set-side was not applicable, what analysis was made by the contracting officer regarding the possibility of a partial set-aside?

Response: DLA advises that they ascertained there were sufficient small businesses to have competition on this partial small business set-aside. As indicated above, a total

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small business set-aside was precluded because of the interest of the large business planned producer.

DLA advises us that no award decision has been made. The responsibility of the lowest bidders is still being reviewed. If any small business bidders are not found responsible, DLA will be required to comply with the Small Business Administration's Certificate of Competency procedures.

If you have any further questions regarding this matter, please contact our Office.

Sincerely yours,



Harry R. Van Cleve
General Counsel