

*Lieberman*

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**DECISION**



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

FILE: B-201956

DATE: September 23, 1981

MATTER OF: Human Sciences Research, Inc.--  
Reconsideration

**DIGEST:**

1. Agency finding that award of a partial small business set-aside to the only technically acceptable small business offeror would result in cost to agency of almost double the cost of award to the low large business offeror is tantamount to agency determination of price unreasonableness, which is a proper basis for dissolution of a set-aside.
2. Even if the agency specifically dissolved a set-aside for an arguably erroneous reason, this is of no consequence where a proper contemporaneous reason adequately supports the determination to dissolve.
3. Estoppel doctrine is inapplicable where the Government never makes any representation to an offeror which reasonably can be construed as an indication that the offeror had received or imminently would receive a contract award.
4. Small business which elects to compete for a partial small business set-aside, rather than submit a proposal in conjunction with a large business, has no grounds to object to a set-aside dissolution when its unreasonably high price provided the basis for dissolution of the set-aside.

Human Sciences Research, Inc. (HSR), a small business, requests that we reconsider our decision in Human Sciences Research, Inc; Copley International Corporation, B-201956; B-201956.2, July 21, 1981, 81-2 CPD 53.

The solicitation, "30 percent set-aside for small business," covered four survey data collection items and one data processing item. In the decision, we held that

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the Department of Commerce (Commerce) had properly dissolved the partial small business set-aside because the price submitted by HSR, the only technically acceptable small business, was unreasonable for the data processing item.

HSR contends that our finding that the partial set-aside was dissolved because of an agency determination of price unreasonableness constitutes a distortion of the record. According to HSR, the agency actually acted because of its mistaken belief that the partial set-aside formulation was illegal because the solicitation did not specify a separate portion reserved for small business only. HSR also asserts that our decision did not address its argument that Commerce was estopped from denying HSR the data processing award under the partial set-aside.

We find these arguments without merit.

HSR's assertion that our decision distorted the record is inaccurate. Our decision indicated that the agency dissolved the set-aside because of price unreasonableness and the defective nature of the set-aside formulation. We did not reach the issue of whether the asserted defectiveness was an independently valid basis for dissolution because we concluded that there were reasonable grounds for a finding of price unreasonableness.

In reviewing the record, we agree that the agency did not explicitly state in the dissolution determination that HSR's price was unreasonable. The stated reason for the dissolution related to the defectiveness of the set-aside formulation. However, Commerce also found that an award to HSR of the data processing would result in a cost to the agency of almost double the cost of award to a competing large business, the eventual awardee. Commerce also indicated that, because HSR was the only small business firm which submitted a technically acceptable proposal, insufficient small business competition existed. Together, these statements are tantamount to a finding of price unreasonableness.

HSR's argument that the record actually contains a finding that its price was not unreasonable is contradicted by the record. The contract specialist, prior to the dissolution determination, specifically found that a particular combination, including award of the data processing component to HSR, had the least cost impact

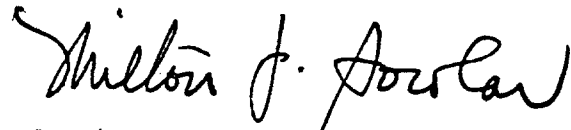
while meeting the terms of the set-aside. However, this does not controvert the finding that the award to HSR of data processing to comport with the set-aside formulation would have been made at a price double that of award to the large business.

In any event, even if the dissolution had resulted only from the agency determination that the set-aside formulation was defective, as noted above, the contemporaneous record provides ample grounds for a determination to cancel because of price unreasonableness. Our Office is concerned with whether the dissolution action is proper and supportable, not with whether it was precisely supported by the stated agency determination. Our inquiry is to determine if the contracting actions taken complied with applicable statutes and regulations in light of the totality of the circumstances existing at the time. Universal Communications Systems, Inc., et al., B-198533, April 27, 1981, 81-1 CPD 321.

Regarding HSR's allegation that our prior decision failed to address its estoppel argument, this is not a case which falls within the traditional estoppel concept as discussed in the case cited by the protester, Fink Sanitary Service, Inc., 53 Comp. Gen. 502, 506 (1974), 74-1 CPD 36. Rather, there must be some act on the part of the Government which reasonably may be construed as a representation that award has been made or is imminent. See Trataros Painting and Construction Corporation, 56 Comp. Gen. 271 (1977), 77-1 CPD 37. In the present case, there never was any tentative award or notification of award to HSR; there was only a preliminary internal agency recommendation of a possible award.

HSR is essentially arguing that because its offer was submitted as a small business, in reliance on the set-aside formulation, rather than as a collaboration with a large business, the Government should be "estopped" from denying it the set-aside award, regardless of any other factors such as price unreasonableness. HSR made a business judgment to submit an offer as a small business. It was permitted to do so under the terms of the solicitation just as it could have competed in collaboration with a large business. HSR made the election to compete for the set-aside and submitted an unreasonably high price; the Government is not "estopped" to deny the firm an award. Rather, the Government is specifically authorized to dissolve a set-aside where, as here, there is a determination of price unreasonableness.

Accordingly, we affirm our prior decision denying HSR's protest.

A handwritten signature in dark ink, reading "Milton J. Aorlan". The signature is written in a cursive, flowing style with a large initial 'M' and a long, sweeping tail.

Acting Comptroller General  
of the United States