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DECISION



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

FILE: B-206798.2

DATE: May 23, 1983

MATTER OF: The General Services Administration--
Reconsideration

DIGEST:

Where agency has not advanced additional facts or legal arguments which show prior decision was erroneous, decision is affirmed.

The General Services Administration (GSA) requests that we reconsider our decision in the matter of DISA Electronics, 62 Comp. Gen. ___ (B-206798, March 25, 1983), 83-1 CPD 306. In that decision, we sustained the protest of DISA, a large business, against GSA's set-aside for small businesses of Federal Supply Service (FSS) multiple-award contracts for a broad category of instruments described as "velocimeters." We found the set-aside improper because the evidence available to the contracting officer prior to the receipt of offers suggested that only one small business firm could supply a portion of the models and that this firm had received the large majority, in terms of dollars, of FSS sales of those particular instruments under a previous FSS set-aside.

We recommended that, for the 1984 FSS, GSA obtain data specifying the types of velocimeters or velocimeter components purchased by the Government under previous FSS set-asides, and, if that data reveals that there is in fact no reasonable expectation of competition for particular types of velocimeters, the 1984 FSS contracts for those velocimeters not be set aside.

GSA contends that our decision in this case is contrary to decisions of our Office in which we consistently have held that the decision to set aside a procurement is basically a business judgment within the broad discretion of the contracting officer and that, absent a clear showing of abuse of discretion, fraud or bad faith, we will not substitute our judgment for that of the contracting officer. GSA also argues that the contracting officer followed all applicable procedures in making the set-aside determination and that GAO based its decision on information not available to the contracting officer at the time the set-aside determination was made and improperly "reevaluated in retrospect" the contracting officer's determination.

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GSA also states that this velocimeter procurement constituted a unique situation, that is, a demonstrated need for sophisticated, top-of-the-line equipment which could be supplied by only one small business under the total small business set-aside. Thus, GSA concedes that, under these circumstances, this sophisticated item should not be included under future set-asides. Nevertheless, GSA argues that our decision could have a broad affect on other multiple award schedules, requiring costly and detailed review of each model to determine if competition exists without any certainty that the contracting officer's decision would be upheld by GAO. GSA requests that the decision be restricted to cases where it can be readily determined prior to establishing a small business set-aside that only one small business supplier can produce the most sophisticated application of the product and there is a demonstrated need for that product.

We think our decision in this case was consistent with prior decisions of this Office. We examined the contracting officer's determination under the applicable Federal Procurement Regulations (FPR) § 1-1.706-5(a) (1964 ed.) standard to determine whether there was "a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible concerns * * * so that awards will be made at reasonable prices." We found that the contracting officer was aware prior to the receipt of offers of the possibility that only one small business firm, TSI Incorporated, was able to supply a portion of the models of the items broadly described under previous set-asides. We concluded that continuation of the total set-aside of the broad category of velocimeters under these circumstances did not effectively promote the set-aside purpose of encouraging a variety of small businesses to participate in Government procurements. In this situation, where the apparent absence of competition for a substantial portion of the item is brought to the contracting officer's attention, we think, as stated in our decision, that the contracting officer must obtain the data necessary to support continuation of the set-aside. The record did not indicate that the contracting officer generated any data to rebut the allegation of an apparent absence of competition for a substantial portion of the item. Thus, we sustained the protest on this basis and

recommended that data be obtained for the 1984 FSS to determine if there is a reasonable expectation of small business competition for the item.

Under these circumstances, we do not think we departed from applicable legal standards contained in prior cases or the FPR. We agree with GSA that the decision is not intended to require GSA to conduct a detailed and costly review of each item solicited under every small business set-aside under the FSS to determine if competition exists. This decision is applicable only to the situation where it can be readily determined prior to establishing a small business set-aside or, as here, after issuance of a solicitation, that only one small business supplier can produce the most sophisticated, top-of-the-line product.

Since GSA has not advanced additional facts or legal arguments which show our earlier decision was erroneous, we affirm our decision. Aunyx Manufacturing Corporation--
Reconsideration, B-208002.2, August 17, 1982, 82-2 CPD 138.

for *Harry R. Dan Clem*
Comptroller General
of the United States