

18384 Mr. Japiske

**DECISION**



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

**FILE:** B-201893 **DATE:** June 9, 1981  
**MATTER OF:** Flo-Max Corporation

**DIGEST:**

1. [Protest against withdrawal of small business set-aside] is denied where determination was based on finding that lowest offer submitted by small business was unreasonably high and record shows that equipment could be obtained at substantially lower price.
2. Complaint that specifications for sewer inspection sealing system trucks were improperly written around one firm's product is without merit where protester does not specify in what respect specifications are restrictive and agency denies allegations.

Flo-Max Corporation protests the withdrawal of a small business set-aside with respect to request for proposals (RFP) F09603-80-R-2164, a solicitation for sewer inspection and sealing system trucks issued by the Warner Robins Air Logistics Center (Air Force). Flo-Max also asserts that the specifications hindered the ability of small business to compete because they were written around one particular manufacturer's equipment rather than for the various standard off-the-shelf products which could be offered by small business concerns.

The requirement was originally solicited as a small business set-aside. After the receipt and evaluation of proposals, it was discovered that the low offeror (Cues, Inc.) was a large business and therefore not eligible for the award. Since the low small business offeror's price was about 16 percent higher than Cues' offer (Flo-Max was the high offeror), the

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contracting officer found that the low small business offer was unreasonable as to price and resolicited the requirement on an unrestricted basis. The Small Business Administration representative concurred in the set-aside withdrawal.

We find no merit to Flo-Max's complaint that the Air Force acted improperly in withdrawing the set-aside.

In similar cases, we have indicated that the withdrawal of a small business set-aside based upon a determination that the prices received from a small business concern are unreasonable is a proper exercise of discretion by the contracting activity which our Office will not question absent a showing of unreasonableness, bad faith or fraud. Lipps, Inc., B-196588, February 15, 1980, 80-1 CPD 137. Moreover, large business offers received in a small business set-aside procurement may be considered as the Air Force has done here in determining whether a small business offer is reasonable. In this respect, we have upheld the rejection of an offer as unreasonable where the lowest eligible offer exceeded this basis for comparison by as little as 7.2 percent. Lipps, Inc., supra.

Further, the record does not indicate that the Air Force's decision resulted from fraud or bad faith. In the circumstances, therefore, we have no basis on which to question the Air Force's determination.

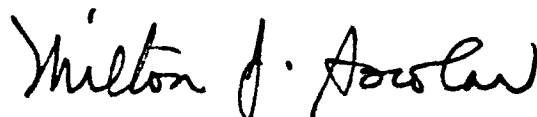
The Air Force also denies the allegation that the specifications were restrictive, and notes that if it intended the specifications to favor one company, it would have been explicit about sealing compounds, testing methods, storage tanks, control console, etc. Flo-Max has not indicated in what particular respect the specifications are restrictive and our own examination of them does not lead us to the conclusion that they are.

For example, the system essentially consists of a standard commercial vehicle, a television inspection camera and monitor, a device to force sealant into a crack or break in a sewer pipe for the purpose of repair, storage tanks for sealant, water and any necessary chemicals, a

control panel, a power supply, hoses, power and TV cable and necessary reels. Except for the TV camera and monitor, the specifications appear to us to have been written in a general way. What they require is a totally self contained vehicle with adequate storage capacity to perform the tasks specified.

Flo-Max has the burden of affirmatively proving its case, Vydec, Inc., B-198275, August 5, 1980, 80-2 CPD 89, but has not done so since it has not alleged where it believes the specifications are restrictive. We are therefore unable to find any legal merit to this assertion.

The protest is denied.



Acting Comptroller General  
of the United States