



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** JAFIT Enterprises, Inc.

**File:** B-266326; B-266327

**Date:** February 5, 1996

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Quin B. Johnson for the protester.

Thomas T. Basil, Esq., Department of the Navy, for the agency.

Henry J. Gorczycki, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Contracting agency violated the competition requirements of the Competition in Contracting Act of 1984 when it made sole-source awards for services to a non-profit agency serving people with severe disabilities, where the acquired services were not on the procurement list maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, as required by the Javits-Wagner-O'Day Act.

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## **DECISION**

JAFIT Enterprises, Inc. protests the sole source awards of purchase orders by the Department of the Navy to Goodwill Industries for administrative services at the Naval Air Warfare Center Training Systems Division, Orlando, Florida. JAFIT protests that the Navy's noncompetitive procurement violates procurement laws and regulations.

We sustain the protests.

JAFIT, a small disadvantaged business, was the incumbent contractor performing these services under two contracts that were initially awarded in 1992 as total small business set-asides. The contracts expired on September 30, 1995.

Prior to the expiration of JAFIT's contracts, the Navy determined that it had insufficient time to conduct competitive procurements for follow-on contracts for these services. In April and May of 1995, the contracting officer sought authorization to extend the terms of JAFIT's contracts for 1 year, pursuant to the authority of Federal Acquisition Regulation (FAR) § 6.302-2, which allows noncompetitive awards where unusual and compelling urgency precludes full and open competition. This request was denied. In June and July, the contracting officer decided to noncompetitively award "bridge" purchase orders to Goodwill, pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. §§ 46-48c (1994), after JAFIT's

contracts expired and until competition for these services could be conducted and new contracts awarded.

The Navy notified JAFIT of the awards to Goodwill on August 30, and JAFIT protested to the Navy on September 8. The Navy denied JAFIT's agency-level protests on September 18, and these protests to our Office followed on September 28.

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1) (1994), generally requires contracting agencies to obtain full and open competition through the use of competitive procedures; however, noncompetitive procedures are authorized where a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source. 10 U.S.C. § 2304(c)(5). The Javits-Wagner-O'Day Act provides authority for noncompetitive acquisitions for specified supplies and services. See FAR § 6.302-5(b)(2). Specifically, the Act established the Committee for Purchase From People Who Are Blind or Severely Disabled (hereafter the "Committee") and granted it exclusive authority to establish and maintain a procurement list of goods and services provided by qualified nonprofit agencies for the blind or disabled. See FAR Subpart 8.7. Once an item or service has been added to the procurement list, contracting agencies are required to procure that item or service directly from a qualified workshop. 41 U.S.C. §§ 47(a), 48; 41 C.F.R. §§ 51-1.2, 51-2.2 (1995); FAR § 8.704; see Jantec, Inc., B-243192, Mar. 14, 1991, 91-1 CPD ¶ 289.

Here, the record establishes that the Navy's noncompetitive awards to Goodwill were not authorized by the Javits-Wagner-O'Day Act, as claimed by the Navy, because, at the time of the awards, the services acquired under the purchase orders were not listed on the Committee's procurement list. Effective January 2, 1996, see 60 Fed. Reg. 61684 (Dec. 1, 1995), the committee added to the procurement list "Administrative Services, Naval Air Warfare Center, Training Systems Division, Orlando, Florida." In so doing, the Committee stated,

"[the Navy's] [a]ward of the current contract for these and other services was not done under authority of the Committee's statute, as the services were not on the Procurement List." Id.

The Navy does not allege, nor do we find, any other statutory authority for its noncompetitive acquisition of these services. Accordingly, we conclude that the Navy violated CICA when it acquired these services noncompetitively from Goodwill prior to January 2, 1996.

While we would normally recommend that the Navy terminate any outstanding purchase orders and conduct a competition for these services under applicable statutes and regulations, it appears that most if not all of the services covered by

the purchase orders have been added to the Committee's procurement list. Accordingly, we do not recommend the termination of any of the outstanding purchase orders for these services. However, because the Navy violated procurement laws and regulations, we find that the protester is entitled to the costs of filing and pursuing its protests, including attorneys' fees. 4 C.F.R. § 21.6(d)(1)(1995). The protester should submit its certified claim for costs to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

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