

DECISION

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

31609

FILE: B-219180 **DATE:** July 5, 1985
MATTER OF: Winfield C. Towles M.D. & Associates

DIGEST:

GAO dismisses a protest alleging that a procurement should have been set aside for small business since, as a general rule, nothing in the Small Business Act mandates that any particular procurement be set aside for small business, and the protester has not shown that any of the statutory or regulatory exceptions apply to the procurement in question.

Winfield C. Towles M.D. & Associates protests the decision of the Naval Supply Center, Charleston, South Carolina, not to set aside for small business a procurement for family counseling and referral services under invitation for bids (IFB) No. N00612-85-R-0542. Dr. Towles asserts that there are more than two small businesses capable of competing for the contract. We dismiss the protest.

As a general rule, the decision whether to set aside a particular procurement is within the discretion of the contracting officer. See Adams & Associates, Inc., et al., B-216673.2 et al., Feb. 1, 1985, 85-1 CPD ¶ 124; Romar Consulting, Inc., B-206764, Mar. 29, 1982, 82-1 CPD ¶ 290. With one exception, nothing in the Small Business Act, 15 U.S.C. § 631 et seq. (1982), makes it mandatory that any particular procurement be set aside for small business.

The statutory exception, set forth at 15 U.S.C. § 644(j), provides that where the goods or services being procured have an anticipated value of \$10,000 or less, and the small purchase procedures are being used to acquire them, the contract shall be reserved exclusively for small business unless the contracting officer is unable to obtain offers from two or more firms that are competitive in terms of price, quality and delivery. See also Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.501(f) (1984); Art Anderson Associates, B-211546, May 6, 1983, 83-1 CPD ¶ 482.

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In this case, the protester has not alleged that the procurement is subject to the small purchase procedures. Moreover, as indicated by documents submitted by the protester, the contracting officer has determined that there was no reasonable expectation of receiving a sufficient number of bids from small business concerns to assure award at a fair and reasonable price.

The procurement regulations contain two additional exceptions to the general rule that a particular procurement need not be set aside for small business. Under the so-called rule of two, the contracting officer is required to set aside a procurement if he determines that there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns and award will be made at a reasonable price. See 48 C.F.R. § 19.502.2. Here, the record shows that the contracting officer's determination that sufficient competition did not exist was made with the concurrence of the small and disadvantaged business utilization specialist. In this context, we assume that this was in essence a determination that not even two small business concerns could be expected to compete. While the protester implies that it wishes to do so, it has not identified any other small business concerns that are currently willing and able to compete, and has not discussed price at all. We therefore cannot find that the business judgment not to set aside was an abuse of the contracting officer's discretion, and we will not substitute our judgment absent a clear showing of abuse of discretion. See A&M School Bus Service, B-208833, Dec. 22, 1982, 82-2 CPD ¶ 566.

The last exception to the general rule is where a product or service previously has been acquired successfully through a small business set-aside. Under this exception, repetitive set-asides are required, subject to the same expectation that competitive offers at reasonable prices will be obtained. See 48 C.F.R. § 19.501(g); Art Anderson Associates, B-211546, supra, 83-1 CPD ¶ 482.

Although the protester has included a document indicating that in 1980 six firms competed for a Naval Supply Center procurement under solicitation No. N00612-81-R-0094, this document does not indicate that the procurement was a small business set-aside. Thus, we are unable

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to conclude on the basis of this information that the requirement for repetitive set-asides applies here.

This protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Deputy Associate
General Counsel