



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** A.W. & Associates, Inc.

**File:** B-243289

**Date:** July 10, 1991

David C. Ashburn, Esq., Roberts, Baggett, LaFace & Richard, for the protester.  
Marilyn W. Johnson, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.  
David Hasfurther, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency's decision not to set aside a procurement for small disadvantaged business (SDB) concerns was proper where the contracting officer determined on the basis of information submitted by interested SDB concerns that reasonable expectation did not exist that offers would be received from at least two responsible SDB concerns at acceptable prices and the agency's Small and Disadvantaged Business Utilization Specialist concurred in this determination.

### DECISION

A.W. & Associates, Inc. protests the failure of the Naval Facilities Engineering Command's Southern Division to issue request for proposals (RFP) No. N62467-91-R-0467 as a small disadvantaged business (SDB) set-aside. The protester contends that the information received by the contracting officer regarding SDB interest in the procurement required him to issue the RFP as an SDB set-aside.

We deny the protest.

The procurement was advertised as being considered for SDB set-aside in the Commerce Business Daily (CBD) on January 17, 1991. The advertisement instructed interested SDB concerns to provide the contracting officer, not later than 15 days after January 17, with evidence of their capability to perform, including performance and credit references, previous contracts of similar size and complexity, and a positive statement of eligibility as a small socially and economically

disadvantaged business concern. It advised that if adequate interest were not received from SDB concerns, the RFP would be issued on an unrestricted basis.

Only A.W. submitted the required information within the 15-day period. In addition to that information, A.W. also provided the names of two other companies that allegedly would be interested in competing for the procurement. After the 15-day period had expired, two companies (other than those named by A.W.) also submitted requests for copies of the RFP, but did not include with their requests the information required in the CBD advertisement. In view of these responses and the fact that the contracting officer determined that insufficient information had been submitted to permit the finding of a reasonable expectation that offers would be received from at least two responsible SDB concerns at acceptable prices, the RFP was issued on February 27 on an unrestricted basis with the concurrence of the Southern Division's Small and Disadvantaged Business Utilization Specialist.

A.W. argues that the contracting officer's determination was erroneous because he possessed sufficient information regarding SDB interest in an SDB set-aside to require a set-aside. A.W.'s submission, the names of the two companies provided by A.W., and the letters of interest submitted by two other companies should have been sufficient, A.W. argues, to have required the contracting officer to have concluded that a reasonable expectation existed that offers would be received from at least two responsible SDB concerns at acceptable prices.

The regulations implementing the Department of the Defense SDB program, set forth in the Department of Defense Federal Acquisition Regulation Supplement (DFARS), part 219 (DAC 88-13), provide that a procurement shall be set aside for exclusive SDB participation if the contracting officer determines that there is a reasonable expectation that: (1) offers will be obtained from at least two responsible SDB concerns and (2) award will be made at a price not exceeding the fair market price by more than 10 percent. DFARS § 219.502-72(a); see Grove Roofing, Inc., B-240743 et al., Dec. 10, 1990, 90-2 CPD ¶ 470. The decision to conduct a particular procurement as an SDB set-aside is a business judgment which will not be disturbed by our Office unless shown to be unreasonable. See Concord Analysis, Inc., B-239730.3; B-241009, Dec. 4, 1990, 90-2 CPD ¶ 452; see also Commercial Energies, Inc., B-234789, July 12, 1989, 89-2 CPD ¶ 40.

We find the contracting officer's decision to issue the RFP on an unrestricted basis to be reasonable. The CBD advertisement required various information from a sufficient number of

interested offerors so as to allow the contracting officer to determine whether there was sufficient interest in an SDB set-aside from responsible SDB companies and, if so, whether acceptable prices could be obtained from them. Only A.W. timely submitted the required information necessary for these determinations. The fact that A.W. submitted the names of two companies that allegedly would be interested in competing for an SDB set-aside does not establish that those firms are likely to compete. Similarly, we do not find that the contracting officer had sufficient evidence to expect offers from the two other firms merely because they requested copies of the RFP. A.W. has not shown that the contracting officer had information, apart from that submitted in response to the CBD advertisement, that was sufficient to support an SDB set-aside for this procurement.

The protest is denied.

*for Robert T. Murphy*  
James F. Hinchman  
General Counsel