

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548***Martin***FILE:** B-210335**DATE:** May 23, 1983**MATTER OF:** Norfolk Dredging Company**DIGEST:**

Once a service has been successfully acquired by a contracting office on the basis of a small business set-aside, the Defense Acquisition Regulation requires that future procurements of that service by the same office continue to be procured on a set-aside basis unless the contracting officer determines that there is no reasonable expectation that competitive bids at reasonable prices will be obtained.

Norfolk Dredging Company protests the decision of the Army Corps of Engineers to restrict competition to small business firms under invitation for bids No. DACW17-83-B-0010. Norfolk, a large business, contends the decision was improper because the contracting officer knew or should have known that there was no reasonable expectation that an award at reasonable prices could have been made under such a restriction. Norfolk's protest to the agency to have the restriction removed was denied before Norfolk protested to our Office. The bids have been opened but no award has yet been made.

The protest is denied.

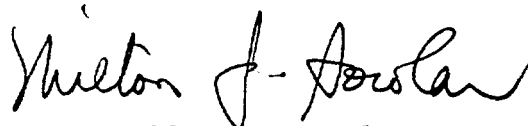
Defense Acquisition Regulation (DAR) § 1-706.1(f) provides that once a service has been successfully acquired by a contracting office on the basis of a small business set-aside, all future requirements of that office for that service also be acquired on a set-aside basis unless the contracting officer determines that there is no reasonable expectation that at least two bids at reasonable prices can be obtained.

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The provisions of DAR § 1-706.1(f) apply here. The agency reports that similar services at the same location had been successfully acquired from small businesses by the same contracting office on six different occasions since 1961. We have been informed by the Army that these awards to small business firms were made in FY 78, FY 72, FY 68, FY 66, FY 64 and FY 61. The 1978 contract was the last contract awarded. Thus, under the regulation the contracting officer was required to set this procurement aside unless he determined that there was not a reasonable expectation of receiving at least two small business bids at reasonable prices. The protester argues that the contracting officer did not make an independent investigation to determine if bids at reasonable prices could be obtained, but instead merely "acceded to the request of the [Small Business Administration] representative * * *." However, the regulation does not require such an investigation, and since the contracting officer did not, in fact, determine that competition and reasonable prices could not be obtained, the set-aside is not legally objectionable.

We note that the results of the restricted competition support the initial decision: 25 small business firms requested the plans and specifications and 9 of them submitted bids. Although the size status of the low and second low bidders was challenged and sent to the Small Business Administration for resolution, seven bids from small firms would remain even if the two low bidders were disqualified. There is also no indication in the record that the prices bid were unreasonable.

The protest is denied.

for 
Comptroller General
of the United States