



**Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** METS, Inc.  
**File:** B-240807  
**Date:** August 24, 1990

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Robert Halpin, for the protester.  
Catherine M. Evans, Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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### DIGEST

Department of Defense regulation requiring that small disadvantaged business (SDB) regular dealers provide a product manufactured by a small business concern in order to be eligible for an SDB evaluation preference is a reasonable implementation of its broad statutory mandate to award 5 percent of the dollar value of its contracts to SDB concerns.

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### DECISION

METS, Inc., a small disadvantaged business (SDB), protests the terms of invitation for bids (IFB) No. N00128-90-B-0061, issued by the Navy. METS argues that the IFB, as amended, improperly deprives it of an evaluation preference otherwise available to SDBs.

We dismiss the protest.

METS objects to an IFB amendment incorporating the Department of Defense Federal Acquisition Regulation Supplement (DFARS) clause, "Notice of Evaluation of Small Disadvantaged Business Concerns" (Alternate I) (July 1989), found at DFARS § 252.219-7007 (DAC 88-14). Under this provision, an SDB regular dealer is entitled to a 10 percent evaluation preference if it agrees to furnish only end items manufactured or produced by small business concerns. METS contends that because it is difficult or impossible to obtain the required end items from small business concerns, the provision improperly penalizes METS by making the evaluation preference unavailable to it.

The Department of Defense (DOD) established the SDB preference program primarily under the authority of

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section 1207 of the National Defense Authorization Act of 1987, 10 U.S.C. § 2301 note (1988), which left to DOD's discretion the promulgation of regulations and procedures to achieve the stated objective of awarding 5 percent of the dollar value of its contracts to SDB concerns. We have previously held that the DFARS provision at issue here is not arbitrary or capricious or inconsistent with the broad discretion conferred by the statute, notwithstanding the fact that it precludes some SDBs from receiving the benefit of an evaluation preference; DOD, as a matter of sound policy, can reasonably refuse to pay a premium, resulting from the use of the evaluation preference, for contract awards that benefit large businesses who sell to the government through SDB regular dealers. Baszile Metals Serv., B-237925, B-238769, Apr. 10, 1990, 90-1 CPD ¶ 378. The fact that METS must waive the evaluation preference in this procurement because it is unable to furnish only end items manufactured or produced by small businesses does not invalidate the provision. Id.

The protest is dismissed for failure to state a valid basis of protest.



David Ashen  
Deputy Assistant General Counsel