



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** American Overseas Book Co., Inc.

**File:** B-257989

**Date:** December 1, 1994

Cicely P. Marks for the protester.  
Kimberly A. Boarts, for EBSCO Subscription Services, an interested party.  
William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.  
Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Contracting officer's decision to procure services on an unrestricted basis, and not through a small business set-aside, is not an abuse of discretion where the market survey conducted by the agency did not support the expectation that offers from two or more responsible small business concerns would be received and where the Director of the agency's Office of Small and Disadvantaged Business Utilization concurred with the decision not to set aside the procurement.

### DECISION

American Overseas Book Co., Inc. protests the decision of the Department of Veterans Affairs (VA) to issue request for proposals (RFP) No. 101-29-94 for subscription services on an unrestricted basis. American Overseas contends that the solicitation should have been issued as a small business set-aside.

We deny the protest.

The RFP was issued to consolidate the procurement of subscriptions of periodicals and serials at the VA's Central Office library for 172 VA medical center libraries. The solicitation required that the contractor provide the labor, equipment, and related services necessary to procure and supply VA subscriptions from a number of sources, including medical; general circulation; trade; university; and scientific publishers. The RFP stated that Standard Industrial Classification (SIC) code 5192, for the wholesale

distribution of books, periodicals, and newspapers, applied to this procurement.

American Overseas argues that the RFP should have been issued as a small business set-aside since there are at least two small businesses capable of performing the contract. The protester alleges that it and Readmore, Inc., another subscription services firm, are small businesses.

The VA reports that its determination not to set aside the procurement was based on a market survey and consultation with its Director of Library Programs and the Director of the agency's Office of Small and Disadvantaged Business Utilization (OSDBU). The agency explains that, before it issued the solicitation, it contacted officials at the Fairfax County (Virginia) Public Library system; the Washington, D.C. Public Library system; the Library of Congress; and the Virginia Commonwealth University Library to identify vendors capable of providing the required services. These libraries provided the names of six companies.<sup>1</sup> The VA contacted five of these companies, explained that it was conducting a survey to locate small businesses capable of performing subscription services, and asked each company if it was a small or large business.<sup>2</sup> Four firms responded that they were large and only one--the protester--responded that it was small.

VA contracting officials also discussed the acquisition with the VA's Director of Library Programs and with the Director of the agency's OSDBU. These officials were able to identify only American Overseas as a small business capable of performing the requirements under the RFP.

Based on its examination of the market, the VA concluded that there was not a reasonable expectation of obtaining offers from at least two responsible, small business concerns and therefore determined to conduct the procurement on an unrestricted basis. VA's OSDBU concurred with the decision.

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<sup>1</sup>The six firms were Avanti, Dawson Subscription Services, EBSCO Subscription Services, American Overseas Book Co., Inc., Faxon, Co., Inc., and Readmore, Inc.

<sup>2</sup>The VA did not contact the sixth firm identified by the market survey because the firm was listed on the General Services Administration's list of companies debarred, suspended, or proposed for debarment from federal procurements.

Generally, we regard a contracting officer's decision determining whether to set aside a procurement as a matter of business judgment within the contracting officer's discretion, which we will not disturb absent a clear showing that it has been abused. FKW Inc., B-249189, Oct. 22, 1992, 92-2 CPD ¶ 270. Under Federal Acquisition Regulation (FAR) § 19.502-2, a procurement is required to be totally set aside for small businesses when there is a reasonable expectation of receiving proposals from at least two responsible small business concerns, and the award can be made at a reasonable price; conversely, unless such a determination can be made, a total small business set-aside should not be made. In this regard, the contracting officer must undertake reasonable efforts to ascertain whether there is a reasonable expectation that the agency will receive offers from at least two small businesses with the capabilities to perform the work. Espey Mfg. & Elecs. Corp., B-254738.3, Mar. 8, 1994, 94-1 CPD ¶ 180; TLC Servs. Inc., B-255758, Mar. 28, 1994, 94-1 CPD ¶ 217.

Here, there has been no showing that the agency abused its discretion by issuing the RFP on an unrestricted basis. As stated above, the record shows that in its market survey, the VA found only one responsible small business--the protester--capable of meeting the requirements and, of the five firms surveyed, only the protester stated that it was a small business. In fact, Readmore, the other firm which the protester argues is small, stated that it is not small.<sup>3</sup> Further, the contracting officer obtained the concurrence of the agency's Director of OSDBU that this procurement should not be set aside for small business.

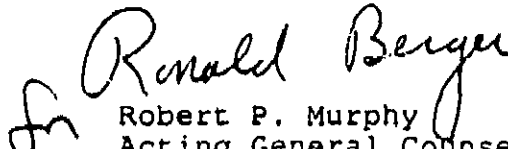
In addition, when proposals were submitted, only American Overseas certified that it was a small business; Readmore, the other firm which the protester alleges is a small business, certified in its offer that it was not small.

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<sup>3</sup>While the protester argues that the contract specialist used an incorrect size standard when she performed the survey, the contract specialist states that she asked each of the surveyed firms whether it is a small business under SIC code 5192. We believe that the agency could reasonably presume that a firm performing the type of work covered by a particular SIC code would know whether it is a small business under the size standard applicable to that SIC code.

We therefore have no basis to question the agency's determination to issue the RFP on an unrestricted basis.

Accordingly, the protest is denied.

  
Robert P. Murphy  
Acting General Counsel

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'In addition, all five offerors certified in their proposals that they would not furnish end items manufactured or produced by small businesses. Under the circumstances, no offeror could qualify as a small business concern because, under 13 C.F.R. § 121.906(b) (1994), in order to qualify as a small business, all products furnished by nonmanufacturer suppliers must themselves be manufactured by small business concerns unless the SBA has granted a waiver of this requirement pursuant to 13 C.F.R. § 121.906(b)(3). This requirement reflects the view that the socio-economic aims of the small business set-aside program are served only if the supplies are manufactured by small business concerns. Certified Slings, Inc., B-243085, May 6, 1991, 91-1 CPD ¶ 442. Here, no waiver has been granted.