



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Okaloosa Asphalt, Inc.
File: B-261258
Date: May 23, 1995

DECISION

Okaloosa Asphalt, Inc. protests the Office of the Chief of Engineers' decision to issue request for proposals (RFP) No. DACA01-95-R-0075 as a total small disadvantaged business (SDB) set-aside.

We dismiss the protest.

Okaloosa argues that the solicitation could not be set aside for SDBs, since it has a dollar value greater than \$25,000, and the requirement--construction under Standard Industrial Classification (SIC) codes 15, 16 and 17--falls within designated industry groups which by regulation are excluded from the SDB set-aside program.

The regulations implementing the Department of Defense SDB program, set forth in Defense Federal Acquisition Regulation Supplement (DFARS) part 219, 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 received from at least two responsible SDB concerns, (2) award will be made at a price not exceeding the fair market price by more than 10 percent, and (3) scientific and/or technological talent consistent with the demands of the acquisition will be offered. DFARS § 219.502-2-70(a). Okaloosa does not allege that the procurement here does not meet these tests. Therefore, the agency properly proposed to set this requirement aside for SDBs.

Okaloosa's position is based on the Small Business Competitiveness Demonstration Program (SBCDP) Act of 1988, 15 U.S.C. § 644 note (1988 & Supp. V 1993), which established a demonstration program under which solicitations in four designated industry groups (including construction) are to be issued on an unrestricted basis where the contracting agency has attained small business participation goals. However, this program only precludes small business set-asides under the designated categories; the SBCDP Act specifically provides that SDB set-asides are

exempt from the demonstration program. See DFARS § 219.1006(b)(1)(A); Kato Corp., 69 Comp. Gen. 374 (1990), 90-1 CPD ¶ 354; Alpha Bldg. Corp., B-242576, Apr. 23, 1991, 91-1 CPD ¶ 402. Therefore, the procurement here was not exempt from the SDB set-aside requirement.¹

The protest is dismissed.



Michael R. Golden
Acting Associate General Counsel

¹Okaloosa's argument is derived from our summary decision Gulf Constr. Group, Inc., B-258211, Aug. 31, 1994. However, this decision erroneously applied the demonstration program exemption to an SDB set-aside; it does not operate to change the applicable statutes and regulations, as discussed above.