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ADHERENCE TO THE CONSTRUCTION SET-ASIDE PROVISIONS  
OF THE SMALL BUSINESS ACT/IN AWARDING DREDGING CONTRACTS  
CORPS OF ENGINEERS (CIVIL FUNCTIONS) DEPARTMENT OF THE ARMY

B-169513  
9-21-70

RESTRICTED

Report to Congressman Wendell Wyatt pursuant to his request.

We furnished information that the Portland, Oregon, and Seattle, Washington, District Offices of the Corps of Engineers followed the provisions of the Armed Services Procurement Regulations, which were jointly developed by the Small Business Administration and the Department of Defense, with regard to setting aside contracts for dredging operations. We concluded that the small business dredging concerns in the Pacific Northwest had been given a fair and reasonable opportunity to compete for dredging contracts. The set-aside program was established by the Small Business Act (15 U.S.C. 631).

*No index*

*Carroll*

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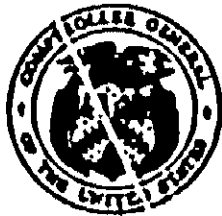
*Report to Congressman Wendell Wyatt pursuant*  
~~This review was made in accordance with a request of Representative~~  
*to his request.*  
~~Wendell Wyatt~~

*(Furnished information)*

We ~~reported~~ that the Portland, Oregon, and Seattle, Washington, District Offices of the Corps of Engineers followed the provisions of the Armed Services Procurement Regulations, which were jointly developed by the Small Business Administration and the Department of Defense, with regard to setting aside contracts for dredging operations. We concluded that the small business dredging concerns in the Pacific Northwest had been given a fair and reasonable opportunity to compete for dredging contracts. *The set-aside program was established by the Small Business Act (15 U. S. C. 631).*

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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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*Army*

September 21, 1970

Dear Mr. Wyatt:

Pursuant to your request of April 2, 1970, we have examined into the manner in which the Corps of Engineers, Department of the Army, is complying with the Small Business Administration's set-aside provisions relating to contracting for dredging operations. As agreed in subsequent meetings with your staff, we limited our review to contracts awarded since January 1, 1968, by the Corps' Portland, Oregon, and Seattle, Washington, District Offices. We gave particular consideration to statements made by Mr. Herbert Palmberg of Astoria, Oregon, in the correspondence you furnished us.

Mr. Palmberg contended that the Corps was not adhering to the set-aside provisions of the Small Business Act and that, even when contracts were set aside for small businesses, certain firms were circumventing the intent of the set-aside program by claiming small business size status although being affiliated in various ways with large businesses.

We discussed these matters with Mr. Palmberg on two occasions and also corresponded with him during our review. We also examined Corps records, and interviewed Corps officials in Portland, Seattle, and Washington, D.C., and Small Business Administration officials in Seattle and Washington, D.C., relative to the administration and intent of the set-aside program.

The set-aside program was established by the Congress through enactment of the Small Business Act (15 U.S.C. 631). Section 2(a) of the act provides that the Government should aid, counsel, assist, and protect--insofar as possible--the interests of small business concerns in order to preserve free competitive enterprise and ensure that small business concerns receive a fair proportion of Government contracts.

The act provided for the Small Business Administration to establish regulations and to consult and cooperate with all Government agencies to ensure that small business interests would be recognized, protected, and preserved. Small Business Administration regulations specify that a dredging company qualifies as a small business if average annual receipts were less than \$5 million for the preceding three fiscal years.

Part 7 of the Armed Services Procurement Regulations, which was jointly developed by the Small Business Administration and the Department of Defense, provides that:

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1. All contracts in excess of \$2,500 and under \$500,000 shall be set aside only if there is reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns to assure awards at reasonable prices;
2. Contracts of \$500,000 or more shall be considered on an individual procurement basis and may be set aside if adequate competition and reasonable prices can be expected; and
3. On dredging contracts, at least 40 percent of the work specified must be performed with dredging equipment owned by the bidder or obtained from another small business dredging concern.

The Portland and Seattle District Offices follow these provisions in setting aside dredging contracts and prepare written justifications, as required by the Armed Services Procurement Regulations, for all contracts estimated to cost under \$500,000 and not set aside. The decision to not set aside a contract is made only when the Corps determines that the small firms cannot do the work in the time allowed or that the small firms cannot be expected to furnish the service at a fair and reasonable price.

Corps officials inform the Small Business Administration Procurement Center Representative in Seattle of those jobs which are not going to be set aside. The Small Business Administration Representative, a liaison between Government agencies and small business firms, then contacts known small business dredgers in the area to determine whether they can do the work and will bid if the job is set aside. If he gets a favorable response, he recommends to the Corps that such contracts be set aside. If the Corps does not accept the recommendation, the Small Business Administration Representative may appeal to Small Business Administration officials in Washington, D.C., where the situation is discussed with officials of the Department of the Army before a final decision is made by the Corps.

The Seattle and Portland District Offices awarded 21 contracts for dredging from January 1, 1968 to July 31, 1970. On the basis of statements made by Corps officials and Mr. Palmberg, we concluded that small business firms were capable of performing 17 of the 21 contracts--12 in the Seattle District and 5 in the Portland District. Ten of the seventeen contracts were awarded to small business firms.

Of the twelve dredging contracts awarded in the Seattle District, seven were set aside and awarded to small dredging firms. The remaining five contracts were awarded to large dredging firms. Of the nine dredging contracts awarded in the Portland District, one was set aside and awarded to a small dredging firm. In addition, small firms were awarded contracts on two of the four jobs capable of being performed by small businesses.

As previously stated, the Armed Services Procurement Regulations provide that a contract will not be set aside unless a sufficient number of small businesses can be expected to bid for the contract so that awards can be made at reasonable prices. Mr. Palmberg believes that one bidder is sufficient to assure reasonable prices because the bidder is competing against a Government estimate and if his bid is within 25 percent of the Government estimate, his price is reasonable. The Corps, however, believes that it must have at least two bidders for a contract in order to assure itself that it will obtain a fair and reasonable price. Thus, before setting aside a contract, the Corps determines whether it can expect at least two small firms to bid. If two bidders cannot be expected, the Corps does not set aside the contract. We agree with the Corps' position that you must have at least two bidders in order to have competition.

We found that the Portland and Seattle District Offices prepared written justifications for all contracts estimated to cost under \$500,000 that were not set aside for small dredging firms. Such justifications were based on availability of competition and equipment and capability of performing the required work. Our review did not indicate that the Portland and Seattle District Offices were arbitrary or capricious in not setting aside the contracts we reviewed. In addition, we found no indications that any of the eight contracts set aside in the two districts were awarded to large dredging firms or small firms affiliated with large firms, thereby circumventing the intent of the set-aside program.

Accordingly, we believe that the Portland and Seattle District Offices of the Corps of Engineers have followed the provisions of the Armed Services Procurement Regulations which are related to setting aside contracts for dredging and that the small business dredging concerns in the Pacific Northwest have been given a fair and reasonable opportunity to compete for dredging contracts.

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We hope that this information will serve the purposes of your inquiry. If you desire further information, we will be pleased to meet with you or members of your staff at your convenience.

Sincerely yours,  
*James B. Adams*

Comptroller General  
of the United States

The Honorable Wendell Wyatt  
House of Representatives