

GAO ruling draws line on small-biz set-asides

Ruling eases the burden on certain types of small firms awarded work under contracts in which they were given "preference"

- By [Matthew Weigelt](#)
- Dec 03, 2009

A recent bid protest ruling essentially keeps the regulatory pressure of doing half of a contract's work off a small business' shoulders if the contract only prefers a certain type of company.

The Government Accountability Office ruled that a socio-economic class of small businesses can get a preferred status in an agency's bid evaluations without the contract being a set-aside vehicle. As a result, a contract that only prefers a certain type of small business is not subject to some Federal Acquisition Regulation (FAR) requirements. Under a set-aside contract, FAR stipulates that the winning business must conduct at least 50 percent of the contract's work. That is not the case, however, if a contract prefers a certain type of company, according to the Nov. 16 [decision](#).

GAO denied a bid protest that challenged the ability of the winning service-disabled, veteran-owned small business ([SDVOSB](#)) to perform half of the contract's work. The Army's National Guard Bureau had awarded the contract for case management and administrative services to Skyline Ultd Inc. However, the Washington-Harris Group charged that the Army gave extra credit to Skyline, even though the bid appears to show that the subcontractor would perform most of the work, according to GAO.

No one disagreed that Skyline would do less than 50 percent of the work, according to the decision.

But Army officials argued, and GAO agreed, that FAR's small-business set-aside clause that refers to SDVOSBs was not included in the solicitation. Thus it did not apply, GAO ruled. Instead, the Army's request for proposals "expressly states that this procurement was neither an SDVOSB set-aside nor at SDVOSB sole-source award," GAO wrote in its decision.

Robert Burton, former deputy administrator at the Office of Federal Procurement Policy and now a partner at the Venable law firm, said this is good news for small businesses. Essentially, "if I'm a service-disabled veteran, I'm still in the game," he said.

"It also incentivizes agencies to do preference contracts," instead of set-asides, he said. More small businesses could compete for contracts because they don't have to have the capacity to handle 50 percent of the

contract's work. Agencies could turn more to preferences in their requests for proposal and get more competition, he said. He added that It may even help agencies reach their annual small-business contracting goals.

About the Author

Matthew Weigelt is acquisition editor for Federal Computer Week.