

- b) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent.
- c) titanium and titanium alloys.
- d) zirconium and zirconium alloys.

Should a Canadian company meet resistance by U.S. contractors in the interpretation of the Specialty Metals clause, contact the appropriate Trade Commissioner in the U.S. or Defence Program Bureau/U.S. Division requesting assistance to clarify the situation.

5.3 Burns and Tollefson Amendments

Two clauses of the Defense Association Act prohibit purchase of any naval vessel from foreign sources as well as the subcontracting of "major components" of naval ship hulls or superstructures to foreign yards. The term "major components" is not precisely defined; therefore Canadian companies interested in that type of work should consult with the U.S. Division of Defence Programs Bureau, External Affairs, to ascertain the situation pertaining to particular U.S. programs.

5.4 Small Business Set-Asides

The U.S. Small Business Administration (SBA) has developed programs with the U.S. Armed Services and DLA under which Government acquisitions are set aside, in whole or in part, for tendering by U.S. small business firms on a competitive basis.

A U.S. small business concern is generally one that:

- a) is independently owned and operated, and is not dominant in the field of operation in which it is bidding on Government contracts (DAR 1-701.1(a)(1));
- b) conforms to Industry Small Business Size Standards. (DAR 1-701.1(a)(2)).

A U.S. Contracting Officer can agree with the Small Business Administration to set aside "the entire amount of an individual acquisition or a class of acquisitions where there is a reasonable expectation that offers will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices" (DAR 1-706.5(a)).

A set-aside for U.S. small business can be a portion of an acquisition where it is found that the procurement can be divided into two or more economic production runs or reasonable lots, and further, where "one or more small business concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price" (DAR 1-706.6(a)).

In addition, under the SBA a policy has been established to encourage the use of women-owned businesses in subcontracting (DAR 1-708).

Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defence Development Sharing Program shall not be set aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

In instances of partial set-aside Canadian companies will find the following note in Invitations for Bid or Requests for Proposal:

Notice of Partial Small Business Set-Aside (1972 July)

- a) *General. Part of this procurement identified in the Schedule as the "set-aside portion," has been set aside for award only to small business concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.*
- b) *Procedures.*
 - 1. *Determining Eligibility.*
 - (a) *To be eligible to participate in the set-aside portion of this procurement, a small business concern must submit a responsible offer on the non-set-aside portion. (DAR 1-706.6(c) and 7-2003.3).*

It is also U.S. Department of Defense policy to afford U.S. small business concerns "to be considered fairly as subcontractors". (DAR 1-701.1). It will be seen that such firms are not to be given special privileges at the subcontract level; they are merely to be given equal opportunity. Therefore, Canadian industry will have an opportunity to compete in the subcontract field, regardless of the fact that the prime contract may be set-aside for small business.

It should be noted that clause (i), under Section 60, No 02, Revision IA of the Standard Operating Procedure, Small Business Administration rules and regulations as per Part 121 of the Federal Register states:

"i) Foreign suppliers and firms supplying foreign products are not eligible to bid on small business set-asides. Bids from such firms on total set-aside procurements should be considered as non-responsive. However, a foreign small business concern which has a place of business located in the United States qualifies as an eligible concern under the Small Business Act if they use American materials, employ American labour, and pay federal and State taxes."

5.5 Labour Surplus Areas Set-Aside

Following is an excerpt from the DAR on this program: "1-802 General Policy. Except as provided in 1-806 with respect to depressed industries, it is the policy of the Department of Defense to aid labour surplus areas (LSA) by placing contracts with LSA concerns, to the extent consistent with acquisition objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place sub-contracts with LSA concerns. In carrying out this policy and to accommodate the small business policies of Section 1, Part 7, preference shall be given in the following order of priority to (i) LSA concerns which are also small business concerns, (ii) other LSA concerns and (iii) small business concerns which are not LSA concerns. In no case will price differentials be paid for the purpose of carrying out this policy. Heads of Procuring Activities and chiefs of purchasing and contract administration offices are responsible for the effective implementation of the Labour Surplus