

11674

PL-1  
Hordell

DECISION



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

FILE: B-196152

DATE: October 16, 1979

MATTER OF: Mills Enterprises, Inc. <sup>DLB 03061</sup>

[Protest of Army RFP Cancellation]

DIGEST:

Determination by procuring agency to withdraw solicitation set aside for minority business under section 8(a) of Small Business Act is not, except in very limited situations not applicable here, for review under bid protest function of General Accounting Office.

AGC00020

Mills Enterprises, Inc. (Mills), protests the Department of the Army's cancellation of request for proposals (RFP) No. DABT15-79-R-0039, for resurfacing of streets and parking lots at Fort Benjamin Harrison.

The RFP was issued pursuant to the Small Business Administration's (SBA) 8(a) program and designated September 24, 1979, as the date for receipt of proposals. On September 10, 1979, the Army canceled the RFP. Mills advises that it did not receive notification until September 18. It was Mills' understanding that the RFP was "being recalled to revise certain specifications and would be reissued to Mills \* \* \* as a '8(a) set aside' (as originally set aside \* \* \*)." However, the Army issued a new RFP (No. DABT15-79-R-0050) for the resurfacing at Fort Benjamin Harrison and designated it a 100-percent set-aside for small business. Mills states that it "was ready, willing and able to submit a proposal before September 24, 1979, and perform the work pursuant to specifications."

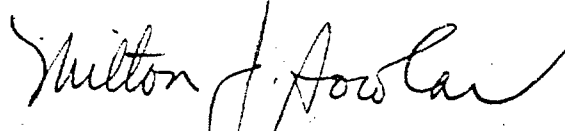
AGC00002

Section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with any Government agency with procuring authority and to arrange for the performance of such contracts by letting subcontracts to small businesses or other concerns. By statute, a Government contracting officer, however, is authorized

007358

"in his discretion" to let the contract to SBA upon terms and conditions agreed to between the SBA and the procuring agency. 15 U.S.C. § 637(a)(1) (1976), as amended by Pub. L. No. 95-507, § 202, 92 Stat. 1761 (1978). Therefore, we have held that the contracting agencies and SBA have broad discretionary authority in this area. See Kings Point Manufacturing Company, Inc., 54 Comp. Gen. 913 (1975), -75-1 CPD 264. This is so regardless of whether the action being challenged relates to a procuring agency decision not to set aside a procurement for a noncompetitive section 8(a) award, Baltimore Electronics Associates, Inc., B-185042, February 17, 1976, 76-1 CPD 105, or to an agency decision to withdraw a procurement from the section 8(a) program. Newton Private Security Guard and Patrol Service, Inc., B-186756, November 30, 1976, 76-2 CPD 457. Thus, agency decisions not to enter into a section 8(a) contract, including decisions based on the evaluation of proposals submitted under the 8(a) program, generally are not matters for legal review by this Office under our bid protest function.

While we have in a very limited situation examined the circumstances surrounding the withdrawal of a procurement from the 8(a) program, see Arcata Associates, Inc., B-195449, September 27, 1979, 79-2 CPD \_\_\_\_\_, the instant protest does not come within the exception. Therefore, the protest is dismissed.



Milton J. Socolar  
General Counsel