

119559

**DECISION**



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

**FILE: B-208970**

**DATE: September 24, 1982**

**MATTER OF: Thacker Construction Co.**

**DIGEST:**

1. Where an option is exercisable at the Government's discretion, the decision whether to exercise it or to issue a new solicitation is a matter of contract administration, which GAO will not review under its bid protest function.
2. The fact that a firm in the Small Business Administration's (SBA) 8(a) program may remain eligible for 8(a) awards under an SBA Interim Emergency Rule even though the firm recently has been judged other than a small business does not make it eligible for non-8(a) small business set-asides. The Interim Emergency Rule pertains to the 8(a) program only and the firm thus cannot be considered small for the purpose of a set-aside award.

Thacker Construction Co. protests the Air Force's refusal to exercise its option to extend Thacker's contract, No. F11623-81-C0010, for housing maintenance and repair services at Scott Air Force Base, Illinois. Thacker alternatively protests the Air Force's refusal to cancel the invitation for bids (IFB) that was issued to obtain the services, IFB No. F11623-82-B-0037, and allow Thacker to participate in a recompetition. The IFB was set aside for small business concerns, and since the Small Business Administration (SBA) had found Thacker to be other than small, the firm was not eligible to compete for the set-aside award and did not submit a bid. Thacker claims that after bid opening but prior to award the SBA found it small pursuant to an SBA Interim Emergency Rule, 47 Fed. Reg. 35754-35756 (1982), which pertains to concerns in SBA's section 8(a) program. Consequently, Thacker maintains, the Air Force should have canceled the IFB to give Thacker an opportunity to compete. We dismiss the protest.

Regarding the Air Force's refusal to exercise the option in Thacker's contract, where an option is exercisable at the discretion of the Government (which is generally the case), the decision whether to exercise the option or to issue a new solicitation is a matter of contract administration which this Office will not review under our Bid Protest Procedures. See Washington Patrol Service, Inc., B-206197, February 17, 1982, 82-1 CPD 143.

We need not consider whether the Air Force should have canceled the IFB in order to give Thacker an opportunity to compete as a small business concern since any size certification under the Interim Emergency Rule would not render the protester a small business concern for the purpose of this procurement, and therefore Thacker could not receive the contract in any case.

The SBA Interim Emergency Rule provides a new alternative size standard for socially and economically disadvantaged small business firms already in the SBA's section 8(a) program to maintain their eligibility for the program despite their having outgrown the size standard under which they were admitted. The program is authorized by section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. IV 1980), which permits the SBA to enter into contracts with any Government agency with procurement authority and to arrange for the performance of such contracts by socially and economically disadvantaged small business concerns. This procurement is not a section 8(a) procurement, however, but a competitive procurement set aside for small business concerns under 15 U.S.C. § 644(a) (Supp. IV 1980) and implementing regulations that authorize contracting officers to "set aside" a procurement for the participation of small business concerns only. See 13 C.F.R. § 125.4(g) (1982); Defense Acquisition Regulation § 1-706.1 (1976 ed.)

There are separate standards for admission into, and continuing eligibility for, the section 8(a) program and for eligibility for a set-aside award under 15 U.S.C. § 644(a). See Microtech Industries Inc. -- Reconsideration, B-206501.2, July 30, 1982, 82-2 CPD 95. To be eligible for the 8(a) program initially, a firm must meet only the small business size standard that applies to its principal business activity. 13 C.F.R. § 124.1-1(c)(1). Under the Interim Emergency Rule, a firm that has outgrown

the standard may continue to participate in the section 8(a) program if it does not have a net worth in excess of \$4,000,000 and average net income after Federal income taxes for the preceding two fiscal years in excess of \$1,000,000. In contrast, the size standards in other procurements are applied on a procurement-by-procurement basis and vary depending on the class of products or services involved. See 13 C.F.R. § 121.3-8. Except for the Interim Emergency Rule, the size standard for maintenance and repair services in both cases is based on an average annual monetary receipt limitation for the previous three fiscal years. 13 C.F.R. § 121.3-8(e).

By its terms the Interim Emergency Rule, under which Thacker claims to have been certified "small," applies to section 8(a) eligibility only. Thus, the fact that an 8(a) concern no longer meeting the applicable size standard can remain in the program by virtue of the Interim Emergency Rule does not permit the firm to compete for award under a small business set-aside.

Thacker's submission shows it was found to be other than small for the purpose of set-aside procurements for maintenance services. Under SBA regulations a firm, after being found large, may not certify itself as a small business under the same or smaller standard until it has been recertified as a small business concern by SBA. 13 C.F.R. § 121.3-8. Since Thacker has not been recertified as small, Thacker would not be eligible for a set-aside award here in any event. We therefore see no practical reason to consider the merits of its protest that the Air Force should have canceled the IFB.

The protest is dismissed.

*Harry R. Van Cleve*  
For: Harry R. Van Cleve  
Acting General Counsel