

DECISION

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

26389

FILE: B-212975**DATE:** October 3, 1983**MATTER OF:** TECOM Incorporated**DIGEST:**

1. Protest allegation--that bidders on a total small business set-aside are not small businesses and that the solicitation thus must be canceled--in essence is a size status protest and is dismissed; the Small Business Administration, not GAO, has conclusive authority to decide such matters.
2. Protest allegation--that the solicitation must be canceled if SBA rules that the wrong size standard was used--is dismissed as premature where SBA has not yet determined that the wrong size standard was used.

TECOM Incorporated protests the award of any contract under invitation for bids (IFB) No. N62467-83-B-2921. This solicitation, issued by the Department of the Navy as a total small business set-aside, sought bids to conduct the transportation operations at the Naval Station in Mayport, Florida. We dismiss the protest.

According to TECOM, the IFB was issued July 20, 1983, with a small business size standard limiting the competition to firms with average annual receipts for the preceding 3 years not exceeding \$2 million. TECOM, unable to meet this standard, protested to the Small Business Administration (SBA) that the proper size standard for this procurement was one limiting the competition to firms with 500 or fewer employees. Prior to an SBA ruling on the matter, the Navy issued Amendment 0002, changing the standard to the 500 employee limitation urged by TECOM. Thereafter, on August 23, still prior to any SBA ruling, the Navy issued Amendment 0003, which changed the size standard back to \$2 million in average annual receipts and set bid opening for September 1. The Navy opened bids as scheduled and TECOM was not the low bidder. The Navy is

026802

B-212975

withholding the award pending SBA's ruling on TECOM's size standard protest, which apparently still is under consideration.

TECOM first argues that, assuming SBA rules the \$2 million size standard currently included in the solicitation was proper, the Navy must cancel the solicitation and conduct a new procurement because none of the bidders qualified as small businesses under this size standard. This allegation in essence constitutes a size status protest, a matter over which SBA, not our Office, has conclusive authority. See 15 U.S.C. § 637(b)(6) (1982). Since our Office will not consider whether the firms which submitted bids are eligible for award as small businesses, we have no basis for concluding that the IFB should be canceled. See 4 C.F.R. § 21.3(g)(2), added by 48 Fed. Reg. 1932 (1983); Randall Manufacturing Company, Inc., B-211861, June 9, 1983, 83-1 CPD 640.

TECOM also argues that the solicitation should be canceled in the event SBA determines that the Navy should have used the 500 employee standard, in order to assure that all firms have a fair chance to compete. Since it does not appear, however, that SBA has yet determined that the Navy incorporated the wrong size standard in the IFB, we consider this allegation premature and thus inappropriate for our consideration. See generally Remington Rand Corporation, et al., B-204084, et seq., May 3, 1982, 82-1 CPD 408. We do note that an agency is not required to cancel a solicitation based on a size standard ruling issued by SBA after bid opening. See Defense Acquisition Regulation § 1-703(c); Logistical Support, Inc., B-205538, March 10, 1982, 82-1 CPD 227.

TECOM finally maintains that following cancellation of the IFB here, this procurement should be resolicited on an unrestricted basis rather than being set aside for small business, in order to maximize competition. Since we do not share TECOM's view that the IFB must be canceled, we need not address this allegation.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel