

DECISION



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

FILE: B-211833

DATE: October 17, 1983

MATTER OF: Amertex Enterprises Ltd.

DIGEST:

Protest against agency determination of fair market price for negotiations with the Small Business Administration under the section 8(a) program is dismissed where the administrative appeal process is being followed.

Amertex Enterprises Ltd. (Amertex) protests the alleged impropriety in the determination of the fair market price for negotiation of a contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), pursuant to request for proposals (RFP) DLA100-83-R-0080 issued by the Defense Personnel Support Center, Philadelphia, Defense Logistics Agency (DLA), for 289,970 camouflage, chemical protective suits.

We dismiss the protest.

Section 8(a) of the Small Business Act empowers the Small Business Administration (SBA) to enter into contracts with agencies of the federal government and to subcontract with disadvantaged small business concerns for the performance of the contract. For the purpose of negotiating with the SBA, the Defense Acquisition Regulation (DAR) § 1-705.5 (DAC No. 76-19, July 27, 1979) provides for the determination of a "fair market price" by the contracting officer. It is the amount determined by the contracting officer and the manner of that determination which are protested by Amertex.

However, section 8(a) of the act expressly provides:

"Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator." (Emphasis added.)

DAR § 1-705.5(a) (DAC No. 76-19, July 27, 1979) provides for appeal by the Administrator of the SBA to the head of the appropriate department. The record shows that the

Administrator of SBA filed an appeal with the Director of DLA by letter dated July 29, 1983, and the appeal is still pending.

Since the Small Business Act expressly mandates that disagreements between the SBA and the contracting officer in this matter "shall" be submitted for determination to the head of the procuring agency, our Office will not take jurisdiction.

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