



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: San Antonio General Maintenance, Inc.

File: B-230152

Date: March 14, 1988

DIGEST

Where award is made under a set aside pursuant to section 8(a) of the Small Business Act, a protester which is a non-8(a) firm and is questioning the propriety of the award to a particular 8(a)-eligible firm is not an interested party under General Accounting Office Bid Protest Regulations. The protester lacks the requisite direct economic interest since it would not be eligible to compete for the contract even if the protest were sustained.

DECISION

San Antonio General Maintenance, Inc. (SAGM), protests the award of a contract to Rite-Way Services of San Antonio, Inc., for custodial services at Kelly Air Force Base, under request for proposals No. F41650-87-R-0362. The Air Force awarded this contract to the Small Business Administration (SBA), which in turn awarded a subcontract to Rite-Way under the SBA's section 8(a) program. See 15 U.S.C. § 637(a) (1982 and Supp. III 1985). SAGM asserts that the award price was unreasonable, in violation of Federal Acquisition Regulation § 19.805(b) (FAC 84-31).

We dismiss the protest.

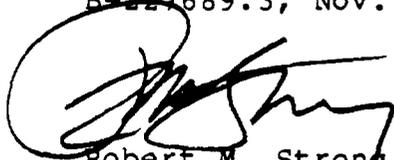
The Air Force asserts that it properly determined that award was at a reasonable price. It also points out that SAGM is an 8(a) graduate and, therefore, is ineligible to participate in an 8(a) set-aside acquisition. Previously, when it graduated from the 8(a) program, SAGM filed suit in the United States District Court for the District of Columbia, alleging that this acquisition had been improperly set aside for exclusive 8(a) participation. The court held that the 8(a) set-aside was proper. Accordingly, the Air Force points out that even if our Office were to determine that the negotiated price was unreasonable, the Air Force would

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merely reopen negotiations with SBA to arrive at a more reasonable price. The requirement would remain set aside, and the SBA would subcontract with whatever 8(a) firm it selected. Therefore, the Air Force contends that, since SAGM is not an eligible 8(a) firm, SAGM is not an interested party under our Bid Protest Regulations. We agree.

Under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1988), a protester must have a direct economic interest which is affected by the award of a contract in order to be considered an interested party. Here, even if SAGM's protest were sustained, it would not be eligible to compete for the contract in question. Accordingly, we have explicitly held that a non-8(a) firm is not an interested party to protest the qualifications of a particular 8(a)-eligible firm. Washington Patrol Service, Inc.--Reconsideration, B-214568.2, July 17, 1984, 84-2 CPD ¶ 57.

The protest is dismissed without holding the conference requested by SAGM, or considering whether SAGM is entitled to certain documents which it has requested regarding the determination to award to Rite-Way, since to do so would serve no useful purpose. Kellogg Plant Services, Inc. B-227689.3, Nov. 24, 1987, 87-2 CPD ¶ 510.



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