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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Logistical Support, Inc.

File: B-232303.2

Date: September 13, 1988

DIGEST

Protest that agency was required by Federal Acquisition Regulation § 19.501(g) to issue solicitation as small business set-aside because previous requirement had been procured on that basis is dismissed where previous procurement was not a small business set-aside but instead was processed through the section 8(a) program under the Small Business Act.

DECISION

Logistical Support, Inc. objects to the Department of the Army's decision to issue, as a small disadvantaged business (SDB) set-aside, solicitation No. DACH77-88-B-1058 for mess attendant services at Schofield Barracks, Hawaii. Logistical contends that the set-aside for SDB is not permissible because this service previously has been acquired successfully by the contracting officer on the basis of a small business set-aside. Logistical contends that Federal Acquisition Regulation (FAR) § 19.501(g) (FAC 84-37) prohibits an SDB set-aside in these circumstances. FAR § 19.501(g) provides that once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service shall, if required by agency regulations, be acquired on the basis of a repetitive set-aside. In addition, a Department of Defense interim rule published in the Federal Register on February 19, 1988, precludes the use of a SDB set-aside where the product or service successfully has been acquired previously under a small business set-aside. Interim rule § 219.502-72(b)(1), 53 Fed. Reg. 5,123 (1988) (to be codified at 48 C.F.R. § 219.502-72(b)(1)).

The Army has advised our Office that the previous requirement was not competed as a small business set-aside, but was processed under the section 8(a) program established by the Small Business Act, 15 U.S.C. § 637(a) (1982). Indeed, we

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recently dismissed an identical protest of this procurement precisely because an award under the section 8(a) program is not an award under a small business set-aside, such that the Army was required to set aside this subsequent solicitation for small businesses. See MLB Professional Services, B-232303, Aug. 26, 1988, 88-2 CPD ¶ ____.

The same rule applies here. Accordingly, the protest is dismissed.



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