

144252



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: L. Washington & Associates, Inc.
File: B-241950.2
Date: June 25, 1991

Lanxton L. Washington for the protester.
Howard B. Rein, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where procurement initially was improperly included in Small Business Administration's Section 8(a) program, even though requirement had been synopsized in the Commerce Business Daily as a total small business set-aside, dissolving 8(a) set-aside and instead setting the procurement aside for small business was proper.
2. There is no requirement for study of adverse impact on small disadvantaged business concerns where procurement is set aside for small business.

DECISION

L. Washington & Associates, Inc., a small, disadvantaged business concern, protests the withdrawal of Department of the Navy invitation for bids (IFB) No. N62472-90-B-0840, from the Small Business Administration's (SBA) Section 8(a) program, and the decision to conduct this security guard services procurement as a total small business set-aside. Washington also complains that SBA should have determined the potential adverse impact on Washington before allowing the withdrawal of the procurement from the Section 8(a) program.

We deny the protest.

The procurement was synopsized in the May 9, 1990, issue of the Commerce Business Daily (CBD) as a total small business set-aside. On August 6, after the CBD notice was published but prior to issuance of the solicitation, the Navy offered the procurement for inclusion in SBA's Section 8(a) program. Section 8(a) of the Small Business Act authorizes SBA to enter

into performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. 15 U.S.C. § 637(a) (1988). On August 30, the Navy's notice of cancellation of the proposed small business set-aside was published in the CBD. SBA accepted the Navy's offering on September 7, and the Navy then proceeded to issue the IFB as a competitive Section 8(a) set-aside. See Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 219.502-72 (1988 ed.).

Before award was made, however, Selective Investigative Service (SIS) filed a protest in our Office asserting, among other things, that since the Navy first synopsisized the procurement in the CBD as a small business set-aside, the agency's subsequent conversion of the procurement to a Section 8(a) set-aside was improper. The Navy ultimately agreed (and we therefore dismissed the protest), the procurement was withdrawn from the 8(a) program, and the Navy issued an amendment resoliciting the requirement as a total small business set-aside. Washington argues that withdrawing the procurement from the 8(a) program and setting it aside for small business was arbitrary and capricious.

Under SBA regulations, absent extraordinary circumstances, once a procurement has been announced in the CBD as a small business set-aside, it must be conducted as a small business set-aside; it cannot thereafter be included in the Section 8(a) program. See 13 C.F.R. § 124.309(b) (1990). Here, the procurement was synopsisized in the CBD in May; it was not until August that the Navy offered the requirement for inclusion in the 8(a) program. The conversion of the proposed small business set-aside to an 8(a) procurement was not based on any alleged error or any other extraordinary circumstances. Under these circumstances, the procurement could not be accepted into the 8(a) program and it was proper for the Navy to set the procurement aside for small business. See State Janitorial Servs., Inc., B-240646, Dec. 6, 1990, 90-2 CPD ¶ 463.

The protester argues that, prior to accepting the procurement as a total small business set-aside, SBA should have determined the potential adverse impact on Washington as a small disadvantaged business. Under SBA regulations, however, an adverse impact analysis on small business concerns is required only before SBA accepts a procurement into the 8(a) program.

See 13 C.F.R. § 124.309(c). There is no requirement that an adverse impact analysis be conducted under the circumstances here.

The protest is denied.


for James F. Hinchman
General Counsel