



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

927134

Decision

Matter of: Border Maintenance Services, Inc.

File: B-252680

Date: April 13, 1993

Donald E. Barnhill, Esq., East & Barnhill, for the protester.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office will not consider a protest challenging a specification in solicitation issued on a sole-source basis under the Small Business Administration's (SBA) section 8(a) program since negotiating the terms and conditions of a proposed section 8(a) contract on behalf of the proposed subcontractor is properly left to SBA.

DECISION

Border Maintenance Services, Inc. protests a specification contained in solicitation No. GS-07P-92-HTC-00500, issued by the General Services Administration (GSA) for custodial services at locations in Austin, Texas. The solicitation was issued on a sole-source basis under the Small Business Administration's (SBA) section 8(a) program. The protester, a section 8(a) participant, argues that the specification overstates the agency's minimum needs.

We dismiss the protest because our Office generally has no jurisdiction to review SBA's stewardship of the small disadvantaged business contracting program.

Border states that the solicitation includes a specification which GSA has interpreted to require the contractor to carry workers' compensation insurance.¹ The protester contends that the specification only requires contractors to comply

¹The protester has not provided our Office with the actual text of the provision at issue.

with federal and state workers' compensation statutes, and that the applicable Texas law does not require contractors to carry state workers' compensation insurance. Consequently, Border argues that the specification, as interpreted by the agency, both overstates the agency's minimum needs and violates the Small Business Act's policy of allowing disadvantaged small business concerns the maximum practicable opportunity to participate in a federal procurement."

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. This is a contracting approach which in general is not subject to the competitive and procedural requirements of the procurement regulations and the statutory provisions they implement. Arawak Consulting Corp., 59 Comp. Gen. 522 (1980), 80-1 CPD ¶ 404; Cassidy Cleaning, Inc., B-218641, June 24, 1985, 85-1 CPD ¶ 717. Because of the broad discretion afforded SBA and the contracting agencies under the applicable statute and regulations, our review of actions under the section 8(a) program generally is limited to determining whether government officials have violated regulations or engaged in fraud or bad faith. See 4 C.F.R. § 21.3(m)(4) (1993); Lecher Constr.--Recon., B-237964.2, Jan. 29, 1990, 90-1 CPD ¶ 127.

While Border asks our Office to determine the propriety of one of the terms and conditions of the proposed contract, that determination is properly left to SBA. Under the 8(a) program, once SBA certifies to an agency that it is competent and responsible to perform a specific contract, the contracting officer is authorized to award the contract to SBA based on terms and conditions mutually agreed to by those two parties. Federal Acquisition Regulation (FAR) § 19.800(c). Further, in a sole-source procurement like this one, once SBA accepts the offer in support of an identified participant, SBA is to participate directly in the contract negotiations; SBA is ultimately responsible for approving the resulting contract before award. FAR § 19.808-1. Since negotiating the terms and conditions of a

²"It is the policy of the United States that . . . small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal Agency. . . ." 15 U.S.C. § 637(d) (1988).

proposed section 8(a) contract on behalf of the proposed subcontractor is clearly left to SBA, our Office will not consider a protest of the propriety of such terms and conditions.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the text 'The protest is dismissed.'

Robert M. Strong
Associate General Counsel