



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arbor Landscaping, Inc.

File: B-231515

Date: June 13, 1988

DIGEST

1. The Small Business Administration has the statutory authority to determine whether a firm is small and disadvantaged for purposes of eligibility for federal procurement preferences.
2. General Accounting Office does not review a protest of an agency's affirmative determination of responsibility absent a showing of possible fraud, bad faith, or failure to apply definitive criteria contained in the solicitation.

DECISION

Arbor Landscaping, Inc., protests the Naval Facilities Engineering Command's award of a contract for grounds maintenance to any other bidder under solicitation No. N62470-87-B-4314. The solicitation provided for a bidding preference for small disadvantaged businesses by virtue of which, it appears, Arbor's bid was evaluated as higher in price than were its competitors' bids. Arbor claims that its competitors falsely certified their disadvantaged status and/or are not responsible business concerns.

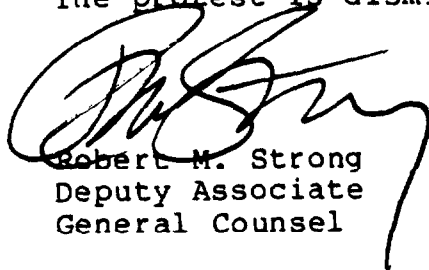
We will not consider the protest. The subject evaluation preference is provided for in rules issued by the Department of Defense (DOD) to implement section 1207 of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. No. 99-661, 100 Stat. 3973, and section 806 of Pub. L. No. 100-180, 101 Stat. 1126 (the DOD Authorization Act for fiscal years 1988 and 1989). See 53 Fed. Reg. 5114 (1988). Section 1207(a)(1) of Pub. L. No. 99-661 defines the firms to which the statute applies by reference to section 8(d) of the Small Business Act, 15 U.S.C. § 637(d) (1982), which essentially leaves it to the Small Business Administration (SBA) to determine whether a firm is small or disadvantaged. See 15 U.S.C. § 637(d)(3). Further, the implementing rules themselves prescribe the way to protest an offeror's

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eligibility for the evaluation preference, requiring filing with the contracting officer who then must forward the protest to the SBA for a conclusive determination. Accordingly, it is up to the SBA, not our Office, to judge a firm's disadvantaged status for purposes of the preference in issue. See also Saliba Construction Co., Inc., et al., B-230215, et al., Mar. 3, 1988, 88-1 CPD ¶ 231 (concerning eligibility for the section 8(a) program).

Our Office also will not consider the protester's claim that its competitors are not responsible business concerns. We do not review protests of affirmative determinations of responsibility unless there is a showing of possible fraud, bad faith, or failure to apply definitive criteria contained in the solicitation. 4 C.F.R. § 21.3(m)(5) (1988). Arbor has not made such a showing.

The protest is dismissed.



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General Counsel