

Gilholly



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: DeHorn Corporation  
File: B-232059  
Date: August 9, 1988

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## DIGEST

Protest by second low bidder, a small disadvantaged business (SDB) concern, that award to low bidder on total small business set-aside is contrary to agency policy of granting an evaluation preference to SDB's, is dismissed because policy does not apply to total small business set-aside.

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## DECISION

DeHorn Corporation, a small disadvantaged business (SBA), concern protests the award of a contract to Govern Service, Inc., the low bidder under invitation for bids (IFB) No. DAKF27-88-B-0014, issued by the United States Army, Fort Meade, Maryland, for laundry services. DeHorn was the second low bidder in the procurement, which was set aside for small businesses. The protester contends that it should receive the award because it is entitled to the benefit of a 10-percent evaluation preference for SDB's. The preference is provided for in rules issued by the Department of Defense (DOD) to implement section 1207 of the National Defense Authorization Act for FY 1987, Pub. L. No. 99-661, 100 Stat. 3973, and section 806 of Pub. L. No. 100-180 (the DOD Authorization Act for fiscal years 1988 and 1989). See 53 Fed. Reg. 20630 (1988) (to be codified at 48 C.F.R. § 219.7000).

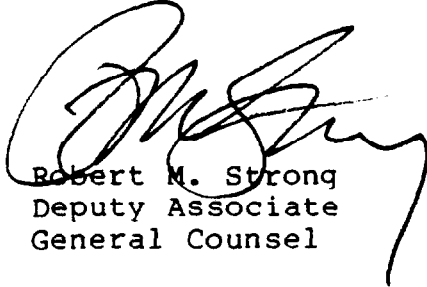
We dismiss the protest without obtaining a report from the Army, since it is clear from the material furnished by the protester that the protest is without legal merit. 4 C.F.R. § 21.3(m) (1988).

Under a previously issued interim rule, 53 Fed. Reg. 5126 (1988), the evaluation preference applied to solicitations issued on or after March 21, 1988. However, under the more recent rules referenced above, the evaluation preference shall not apply to total small business set-asides. These

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rules are applicable to pending solicitations whose bid opening date is after June 6. Since the bid opening date of the protested total small business set-aside was June 22, the evaluation preference does not apply and the protester has no legal basis for claiming its benefits.

The protest is dismissed without holding the conference requested by DeHorn since a conference would serve no useful purpose. Taylor Lumber & Treating, Inc., B-229715, Dec. 23, 1987, 87-2 CPD ¶ 625.



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