



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Defense Services, Inc.
File: B-232303.3
Date: November 1, 1988

DIGEST

Agency is not required by Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 19.501(g) to issue solicitation as a repetitive small business set-aside where a previous small business set-aside procurement included the services in issue as one element of a broader requirement but immediately preceding contract for the services was awarded through the section 8(a) program; the statutory and regulatory scheme suggest that a small business set-aside is not required in such circumstances.

DECISION

Defense Services, Inc. (DSI) 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. DSI 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. DSI 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 this connection, Department of Defense (DOD) FAR Supplement (DFARS) § 19.501(g) does so require. In addition, DFARS § 19.502-72(b)(1) (53 Fed. Reg. 5114, 5123, Feb. 19, 1988) specifically precludes the use of an SDB set-aside where the product or service has been previously successfully acquired under a small business set-aside.

The Army has advised our Office that the mess attendant services solicited under the above invitation for bids were

043744/137211

not previously acquired under a small business set-aside, and for the last 2 years were separately satisfied by awards under the section 8(a) program. DSI, however, relies upon 1986 set-asides for full food services of which mess attendant services appear to have been a part.

We have previously dismissed two protests challenging this SDB set-aside on the strength of the Army's advice that there had been previous section 8(a) awards for this service but no small business set-aside. See Logistical Support, Inc., B-232303.2, Sept. 13, 1988, 88-2 CPD ¶ ____; MLB Professional Services, B-232303, Aug. 26, 1988, 88-2 CPD ¶ 187. This is the first time we have been advised that mess attendant services previously were acquired at Schofield Barracks as part of a larger procurement that was set aside for small business.

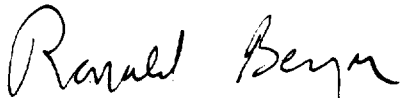
The DFARS provisions applicable here implement section 1207 of Pub. L. No. 99-661, 100 Stat. 3816, 3973 (1986), and section 806 of Pub. L. No. 100-180, 101 Stat. 1126-7 (1987), which establish a DOD goal of awards to SDBs of 5 percent of the value of contracts to be awarded for fiscal years 1987-89, but also provide that current levels of awards made pursuant to small business set-asides and to the section 8(a) program should be maintained. The DFARS implements these statutes in part by providing for SDB set-asides in certain circumstances but, as indicated above, precluding SDB set-asides where the product or service previously was successfully acquired through a small business set-aside. The DFARS also precludes SDB set-asides when the Small Business Administration (SBA) timely requests that a new or follow-on requirement be reserved for the section 8(a) program and such an award is otherwise appropriate. See DFARS § 219.803.

The protester's view is that since mess attendant services previously were acquired, albeit as part of a broader procurement, under a small business set-aside, the services may not now be acquired through an SDB set-aside. It is not at all clear, however, that the DFARS imposes such a limitation. Moreover, it is clear that the immediately preceding contracts for mess attendant services were awarded through the section 8(a) program. In this respect, the thrust of Pub. L. No. 100-180 and the DFARS is that the follow-on contracts for mess attendant services should be section 8(a) contracts if the SBA so requests, rather than small business set-aside contracts. Thus, the fact that the mess attendant services have been broken out from the previous small business set-aside procurement and subsequently acquired under the section 8(a) program suggests that the DFARS does not mandate the use of a small

business set-aside in these circumstances. In addition, the record indicates that it was the SBA (the agency with major responsibility for furthering the interests of small and disadvantaged business), declining a section 8(a) contract because the incumbent contractor graduated from the 8(a) program, that recommended the use of an SDB set-aside here in lieu of an 8(a) award.

Under the circumstances, the agency acted reasonably in deciding to use an SDB set-aside.

The protest is dismissed.

A handwritten signature in cursive script, reading "Ronald Berger".

Ronald Berger
Associate General Counsel