



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Logistical Support, Inc.; Moore's Cafeteria Services Inc.

File: B-234808; B-234894

Date: April 10, 1989

DIGEST

1. Protests that agency was required by Federal Acquisition Regulation § 19.501(g) to issue solicitation as a small business set-aside because previous requirement had been successfully acquired on that basis are dismissed where record shows the immediately preceding procurement was not a small business set-aside.
2. General Accounting Office will not consider protest that a solicitation has the wrong standard industrial classification (SIC) code, since the Small Business Administration is vested with conclusive authority to determine the proper SIC code.

DECISION

Logistical Support, Inc., and Moore's Cafeteria Services Inc., protest the Department of the Army's decision to issue, as a small disadvantaged business (SDB) set-aside, solicitation No. DAAH03-89-R-F003 for food services at Redstone Arsenal, Alabama.

We dismiss the protests.

The protesters contend that the SDB set-aside is improper because the food services previously have been acquired successfully on the basis of a small business set-aside. The protesters rely on Federal Acquisition Regulation (FAR) § 19.501(g), which 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 be acquired on the basis of a repetitive set-aside, if (as here) required by agency regulations. In

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addition, Department of Defense (DOD) FAR Supplement (DFARS) § 219.502-72(b)(1) 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 while at one time these food services were acquired under a small business set-aside, the most recent acquisition for the services was on an unrestricted basis in a consolidated solicitation which included many additional requirements. Thus, the Army argues that the current procurement was not required to be set aside for small businesses under FAR § 19.501(g) or DFARS § 219.502-72(b)(1). We agree.

Our Office recently has dismissed similar protests by non-disadvantaged small business concerns objecting to an agency's decision to satisfy a requirement through the Section 8(a) Program of the Small Business Act, 15 U.S.C. § 637(a) (1982), rather than compete the requirement as a small business set-aside, where at one time the requirement had been set aside for small business concerns. Because the most recent acquisitions were through the Section 8(a) Program and were not small business set-asides, we found that the agencies were not required to set aside the solicitations for small businesses. See Logistical Support, Inc., B-232303.2, Sept. 13, 1988, 88-2 CPD ¶ 241; MLB Professional Services, B-232303, Aug. 26, 1988, 88-2 CPD ¶ 187. Similarly here, because the immediately preceding contract for food services was not awarded under a small business set-aside, the Army was not required to set aside this solicitation for small business concerns. Id.

Additionally, Logistical protests that the standard industrial classification (SIC) code in the solicitation is incorrect since it refers to disinfecting and exterminating services, rather than food services. Our Office does not consider protests relating to what SIC codes will be included in a small business set-aside since the Small Business Administration is vested with conclusive authority to determine such matters. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(2) (1988). In any event, the Army has advised us that it has amended the solicitation to include the SIC code suggested by Logistical.

The protests are dismissed.


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Associate General Counsel