



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** K&M Maintenance Services, Inc.

**File:** B-239568

**Date:** August 28, 1990

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James K. McMillian, Jr., for the protester.  
Vasio Gianulias, Esq., Department of the Navy, for the agency.  
Barbara R. Timmerman, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Challenge of Standard Industrial Classification (SIC) code assigned to a procurement by the agency is not for consideration by the General Accounting Office even where the SBA declines jurisdiction of a particular SIC code appeal since conclusive authority over this matter is vested in the Small Business Administration (SBA).

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### DECISION

K&M Maintenance Services, Inc. protests the decision of the Department of the Navy to issue request for proposals (RFP) No. N62467-90-R-0663 for operations and maintenance of facilities, equipment, and systems at the Naval Air Station, Cecil Field, Florida, on an unrestricted basis rather than as a small business set-aside. K&M contends that the Navy assigned an incorrect Standard Industrial Classification (SIC) code to the procurement which prevented it from being set aside for small business.

We dismiss the protest.

The RFP, issued on March 23, 1990, was classified under SIC code No. 1799, "special trade contractors not elsewhere classified." The previous two solicitations for these services had been assigned SIC code No. 8744, "base maintenance." The agency reports that it has recently reevaluated its base maintenance and operations type solicitations and found the appropriate SIC code for this procurement is No. 1799.

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As indicated below, procurements assigned SIC code No. 1799 may not be set aside for small business. K&M, a small business, contends that the correct SIC code is No. 8744, a classification which would require the RFP to be set aside for small businesses as has been done in previous procurements. In this regard, K&M cites Federal Acquisition Regulation (FAR) § 19.501(g) (FAC 84-56), which generally requires that procurements for products or services be set aside for small businesses if they have been previously successfully acquired under a small business set-aside.

The Small Business Competitiveness Demonstration Program Act of 1988 (SBCDPA), Pub L. No. 100-656, Tit. VII, 103 Stat. 3889 (1988), essentially precludes the setting aside for small businesses of solicitations for services in those designated industry groups<sup>1/</sup> where an agency has achieved a goal of expending 40 percent of its procurement funds for that industry group on contracts awarded to small businesses. See Department of the Navy--Request for Recon., B-235205.2, Jan. 5, 1990, 90-1 CPD ¶ 18. FAR § 19.1001 (FAC 84-52), and the Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 219.1070 (DAC 88-13), generally provide that solicitations issued after January 1, 1989, in four designated industry groups may not be set aside for small businesses unless the contracting agency is otherwise directed.

SIC code No. 1799 is included in the designated industry groups, while SIC code No. 8744 is not, which means that the procurement may not be set aside for small businesses. The requirements in FAR § 19.501(g), concerning repetitive set asides, are waived where a procurement is classified in a designated industry group. See DFARS § 219.1070-1(c)(1).

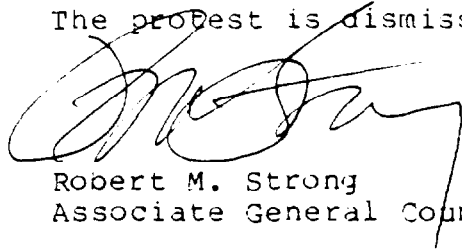
K&M and two other small businesses initially protested this matter to the Office of Hearings and Appeals (OHA) of the Small Business Administration (SBA). That Office dismissed the protests on the grounds that it lacks jurisdiction to review the SIC code assigned to a solicitation that is not a small business set-aside. SIC Appeals of Earth Property Services, Inc.; K&M Maintenance Services, Inc.; The Taylor Group Inc., SBA OHA No. 3277 (April 10, 1990).

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<sup>1/</sup> Each designated industry group includes various SIC codes.

Under SBA regulations, the initial determination of the appropriate SIC code is required to be made by the contracting officer, see 13 C.F.R. § 121.902(c) (1990), with the right of appeal to the SBA. See 13 C.F.R. § 121.902(a). The SBA has conclusive authority to determine the proper SIC code for a procurement. See 15 U.S.C. § 637(b)(6) (1988); Staffall, B-233205, Feb. 23, 1989, 89-1 CPD ¶ 195. Since SBA is the sole authority for reviewing SIC code designations, challenges of selected SIC codes are not subject to our bid protest jurisdiction. Id.; 4 C.F.R. § 21.3(m)(2) (1990). Even where the SBA does not rule on the particular SIC code issue, we will not rule on challenges of selected SIC codes because of the SBA's exclusive authority in this area. Tri-Way Security & Escort Serv., Inc.--Request for Recon., B-238115.2, Apr. 10, 1990, 90-1 CPD ¶ 380; Swan Indus., B-217199; B-217210, Mar. 25, 1985, 85-1 CPD ¶ 346.

The protest is dismissed.



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