

B. Timmerman



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sletager, Inc.
File: B-240789.2; B-241308; B-241318
Date: February 1, 1991

Ralph Sletager for the protester
Sophia Rafatjah, Esq., Department of the Army, 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.

DIGEST

1. Protests are dismissed where the same issues were considered and denied in recently decided protests involving the same parties.
2. Protest of apparent solicitation defect filed with the General Accounting Office (GAO) 2 months after protester's agency-level protest was denied, is untimely, even though the protest to the GAO was filed prior to closing date for receipt of initial proposals, since denial of agency-level protest constituted adverse agency action after which any protest to the GAO was required to be filed within 10 working days.

DECISION

Sletager, Inc., a small business concern, protests the decision by the Department of the Army to set aside for small disadvantaged business (SDB) concerns solicitation Nos. DAKF57-90-B-0011 (-0011) and DAKF57-90-B-0083 (-0083). Sletager also protests the Army's decision to place solicitation No. DAHC76-90-R-0018 (-0018) under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988). The solicitations are for painting, building repairs and related services; -0011 and -0083 are for Fort Lewis, Washington, and -0018 is for Fort Richardson, Arkansas. Sletager essentially contends that the SDB and the section 8(a) set-asides conflict with the requirements of the Small Business Competitiveness Demonstration Program Act of 1988 (the SBCDP Act), 15 U.S.C. § 644 note (1988), and that it is improper to apply the SDB program and section 8(a) program to construction contracts.

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We dismiss the protests.

With regard to the solicitations set aside for SDB concerns, Sletager previously protested invitation for bids No. DACA67-90-T-0017 (-0017), an SDB set-aside issued by the Army for exterior painting at Fort Lewis, Washington.^{1/} We denied Sletager's protest in Sletager, Inc., B-241149, Jan. 25, 1991, 91-1 CPD ¶ _____. We found that there was no conflict between the relevant Department of Defense Federal Acquisition Regulation Supplement (DFARS) provisions implementing section 1207 of the National Defense Authorization Act for Fiscal Year 1987, 10 U.S.C. § 2301 note (1988), that provides for SDB set-asides and the provisions of the SBCDP Act, and that the painting requirements should be set-aside for SDB concerns, if otherwise required under the DFARS. We also stated that we would not consider the protester's challenge to the constitutionality of set-aside programs, and that the set-asides did not violate the prohibitions against discrimination in Federal Acquisition Regulation § 22.802 and Executive Order 111246.

Sletager raises these same issues, with virtually identical arguments, here in contending solicitation Nos. -0011 and -0083 were improperly set aside for SDBs. No purpose would be served in our reconsideration of these issues on protests of procurements for basically the same services involving the same parties. See The Castoleum Corp., B-237786, Dec. 27, 1989, 89-2 CPD ¶ 601. Consequently, we dismiss these protests.

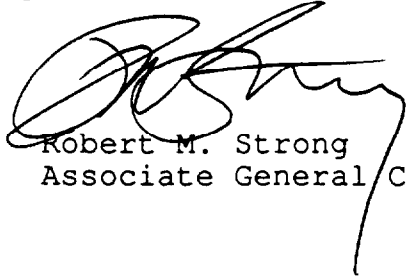
With respect to solicitation No. -0018, Sletager's protest is untimely. Request for proposals (RFP) No. -0018 was issued on June 13, 1990, as a section 8(a) set-aside. Prior to the closing date, by letter of July 13, Sletager filed an agency-level protest of the set-aside. By letter of July 23, the agency denied that protest. Sletager filed its protest with our Office on September 26. The closing date for receipt of proposals under this RFP has been postponed.

Our Bid Protest Regulations require that protests of apparent solicitation improprieties must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1990). In a case where an alleged impropriety is timely protested to a contracting agency, any subsequent protest to this Office

^{1/} As was the case here, the Army found sufficient qualified SDB concerns to justify an SDB set-aside.

must be filed within 10 days of actual or constructive knowledge of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3). Since Sletager did not file its protest with our Office until 2 months after its agency-level protest had been denied, this protest is untimely, even though it was filed with our Office prior to the closing date.

The protests are dismissed.



Robert M. Strong
Associate General Counsel