



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Microform Inc.
File: B-244881
Date: August 23, 1991

James P. Ruocchio for the protester,
Roger D. Waldron, Esq., General Services Administration, for
the agency,
Sylvia Schatz, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. There is no requirement for procurement, which was previously conducted as a small business set-aside, to be conducted under a repetitive small business set-aside instead of under Small Business Administration's section 8(a) set-aside program, where the agency has neither promulgated regulations requiring a repetitive set-aside nor publicly expressed a clear intention to reserve the requirement through a notice of intent to set it aside.
2. Argument that Small Business Administration (SBA) should have determined potential adverse impact on incumbent small business concern prior to accepting procurement for inclusion in SBA's section 8(a) program is academic where SBA is currently conducting adverse impact study.

DECISION

Microform Inc. protests the decision of the General Services Administration (GSA) to set aside request for proposals (RFP) No. GS00K89AFC2560, for microfilm and magnetic tape services, under the Small Business Administration's (SBA) section 8(a) program, rather than conduct the procurement as a small business set-aside.^{1/}

We dismiss the protest.

^{1/} Section 8(a) of the Small Business Act authorizes SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. 15 U.S.C. § 637(a) (1988).

Microform, a small business concern and the incumbent contractor for this requirement, first complains that by including the procurement in SBA's section 8(a) program, GSA failed to comply with the Federal Acquisition Regulation (FAR) and SBA's regulations which, he claims, provide that services previously procured under a small business set-aside, as here, must in the future be procured by set-aside.

There has been no violation of the FAR or SBA's regulations. Under the FAR, once services have been acquired successfully by a contracting office through a small business set-aside, all future requirements of that office for the same services generally must be acquired on the basis of a repetitive set-aside, but only if required by agency regulations. FAR § 19.501(g); see Defense Servs., Inc., B-232303.3, Nov. 1, 1988, 88-2 CPD ¶ 423. In addition, SBA's regulations provide that where a proposed requirement has not previously been included in the 8(a) program, SBA will accept the proposed requirement for an 8(a) award if the agency has not publicly expressed a clear intention to reserve the requirement through a notice of intent to set it aside. 13 C.F.R. § 124.309(b) (1990); see State Janitorial Servs., Inc., B-240646, Dec. 6, 1990, 90-2 CPD ¶ 463. GSA has neither promulgated regulations requiring repetitive set-asides nor synopsized the procurement here in the Commerce Business Daily or elsewhere as a small business set-aside. This basis of protest therefore is without merit.

The protester also argues that, prior to accepting the procurement for inclusion in SBA's section 8(a) program, SBA should have determined the potential adverse impact on Microform as the incumbent small business contractor. See 13 C.F.R. § 124.309(c). The record shows, however, that SBA currently is conducting an adverse impact study on Microform as part of its determination whether to accept the procurement into the 8(a) program. This basis of protest thus is academic. See Constantine N. Pclites & Co., B-239389, Aug. 16, 1990, 90-2 CPD ¶ 132.

The protest is dismissed.



John M. Melody
Assistant General Counsel