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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Four Winds Services, Inc.

**File:** B-280714

**Date:** August 28, 1998

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Roberta Carver and Denis M. Carson for the protester.  
C. Gordon Jones, Esq., Department of the Air Force, for the agency.  
Adam Vodraska, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protester is not an interested party to protest the issuance of a small business set-aside solicitation under commercial item acquisition procedures where the protester concedes that it is a large business under the size standard applicable to the solicitation.

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## DECISION

Four Winds Services, Inc., protests the issuance of request for proposals (RFP) No. F64605-98-R-0018 by the Department of the Air Force under the commercial item acquisition procedures of Federal Acquisition Regulation (FAR) part 12. The RFP is for operating the postal service center and the base information transfer center at Hickam Air Force Base, Hawaii. The protester contends that some of the RFP's requirements are not consistent with commercial practice, so that this acquisition should not be procured under FAR part 12 procedures.

We dismiss the protest because Four Winds is not an interested party eligible to maintain this protest.

The RFP was issued as a total small business set-aside, but did not initially include a Standard Industrial Classification (SIC) code and corresponding small business size standard. The Air Force amended the RFP, assigning SIC code 7389 (business services, not elsewhere classified), which has a corresponding size standard of \$5 million annual receipts. FAR § 19.102(g). The Air Force later amended the RFP again, changing the SIC code to 8744 (facilities support management services), which also has a size standard of \$5 million. *Id.* The amendment extended the proposal due date to August 7.

Four Winds appealed the contracting officer's selection of the above SIC codes to the Small Business Administration (SBA) Office of Hearing and Appeals (OHA), contending that the correct SIC code for this acquisition should be 4215 (courier

services, except by air) with a size standard of \$18.5 million. In its appeal, Four Winds stated that "[w]e openly admit that we would be large for a \$5.0m Average Annual Receipts (AAR) [size standard] and small for the \$18.5m AAR [size standard] for SIC [code] 4215." In a decision dated August 19, the OHA agreed with Four Winds that the contracting officer's SIC code designation was erroneous and that the appropriate SIC code for this RFP is 4215 with its \$18.5 million size standard. The agency reports that since the OHA decision was issued after the closing date for receipt of proposals, it is not applicable to this RFP and that the Air Force will not cancel or amend the RFP to change the SIC code. See FAR § 19.303(c)(5).

The Air Force contends that Four Winds should not be considered an interested party to pursue this protest of the issuance of the RFP under commercial item acquisition procedures because Four Winds is a large business under the RFP's existing small business size standard, making it ineligible for award. We agree.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-3556 (West Supp. 1997), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1998). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., B-228470, Feb. 16, 1988, 88-1 CPD ¶ 151 at 2-3. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. Where a large business protester is ineligible for award under a proper small business set-aside, we will not consider its objections to alleged deficiencies in a solicitation since the protester is not an interested party which would be affected by the resolution of the issue. Worldwide Services, Inc., B-206413, June 22, 1982, 82-1 CPD ¶ 615 at 1.

Here, while Four Winds represented in its proposal that it is a small business concern, it also represented that its annual receipts were "\$5,000,001-\$10 million" which, as pointed out by the Air Force, exceeds the \$5 million size standard of SIC code 8744 applicable to this RFP. Although the Air Force has not requested a size status determination from the SBA, we believe that given the circumstances here, the protest should be dismissed absent any showing on Four Winds's part that it is a small business under the RFP's size standard and thus eligible for award. See Worldwide Services, Inc., supra, at 2.

Four Winds contends that it is an eligible small business under the RFP's existing SIC code of 8744 because the RFP does not specify that the SIC code is for facilities support management services with the \$5 million size standard, rather than for base maintenance, another category of SIC code 8744, which has a larger size

standard of \$20 million under which Four Winds would be eligible for award. Four Winds states that it submitted its proposal "in Good faith by declaring itself over \$5.0m but Small for the SIC."

SIC code 8744 is for facilities support management services, with a size standard of \$5 million, except if the solicitation is for base maintenance or environmental remediation services, in which case size standards of \$20 million and 500 employees apply, respectively. FAR § 19.102(g). In its SIC code appeal to the OHA, Four Winds recognized that the \$5 million size standard of SIC code 8744 was applicable to this acquisition and, as noted, Four Winds conceded that it would be ineligible for award under this size standard (although it would be eligible if a higher dollar value size standard were applicable). Thus, we do not think that Four Winds was under any misapprehension as to the SIC code applicable to this RFP. Any doubt on this matter was removed by the OHA, which, in deciding Four Wind's SIC code appeal, found that the RFP's SIC code of 8744 was for facilities support management services with the corresponding \$5 million size standard. Since the applicable size standard for this RFP is \$5 million, which Four Winds concedes it exceeds, we agree with the Air Force that Four Winds has not shown that it is a small business under the RFP's size standard and thus eligible for award.

Four Winds argues, however, that, in light of the OHA decision upholding its SIC code appeal, the RFP should be canceled and reissued with the correct SIC code and size standard, and it is therefore an interested party to protest the remaining aspects of the RFP. Since the OHA decision was received by the contracting officer after the August 7 due date for initial proposals, there is no requirement that the solicitation be canceled or amended to reflect the OHA's view of the proper SIC code. FAR § 19.303(c)(5); Tecom Inc., B-217058, Dec. 5, 1984, 84-2 CPD ¶ 630 at 2. Since the OHA decision did not change the existing size standard for this RFP, Four Winds remains ineligible for award and is not an interested party to protest other aspects of the RFP. 4 C.F.R. § 21.0(a); see Worldwide Services, Inc., *supra*, at 2.

The protest is dismissed.

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