



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: John Blood

File: B-280318; B-280319

Date: August 31, 1998

John Blood for the protester.

Lynn W. Flanagan, Esq., Department of Agriculture, for the agency.

David R. Kohler, Esq., and Denise Benjamin-Bibby, Esq., for the Small Business Administration.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Timber stand improvement requirements were properly accepted into the section 8(a) program where no adverse impact on small businesses was found, pursuant to 13 C.F.R. § 124.309(c) (1998), because it was reasonably determined that the requirements were new, such that there were no incumbent small businesses who would be adversely affected.

DECISION

John Blood protests the decision of the Forest Service and Small Business Administration (SBA) to contract under the section 8(a) set-aside program with Juan Acevedo Reforestation pursuant to request for proposals (RFP) No. CAZ-98-24, and with Arrowhead Starr Company pursuant to RFP No. CAZ-98-27, for timber stand improvements in the Arapaho and Roosevelt National Forests and the Medicine Bow-Routt National Forests in Colorado and Wyoming.¹

We deny the protests.

The Forest Service procures timber stand improvement in connection with commercial timber sales. In order to prepare certain timber for sale, the Forest Service identifies a plot of trees to undergo timber stand improvement by thinning defective trees and/or removing undesirable species of trees from the designated timber stand, so that the most desirable trees are left in the stand for future growth and sale. Timber stand improvement may also include reseeding, replanting, or

¹Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), authorizes the SBA to contract with government agencies and arrange for performance of those contracts by awarding subcontracts to small socially and economically disadvantaged businesses.

regeneration. According to the Forest Service, repeated improvement to the same stand generally is not required.

Acevedo's 8(a) contract was negotiated through the SBA District Office in Fresno, California and Arrowhead's 8(a) contract was negotiated through the SBA District Office in Little Rock, Arkansas. In both cases, the SBA determined that award of the contract for these services would cause no adverse impact on any other small business concerns.

Mr. Blood, who is a small business with various contracts with the Forest Service for timber stand improvement, protests the propriety of the adverse impact determinations.

Because the Small Business Act affords the SBA and contracting agencies broad discretion in selecting procurements for the section 8(a) program, we will review challenges to decisions to procure requirements under section 8(a) only to ensure that agency officials have not acted in bad faith, and that applicable regulations have been followed. American Consulting Servs., Inc., B-276149.2, B-276537.2, July 31, 1997, 97-2 CPD ¶ 37 at 9.

The SBA regulation pertaining to adverse impact, 13 C.F.R. § 124.309(c) (1998), provides that the SBA will not accept a proposed procurement not previously in the 8(a) program if the award

would have an adverse impact on other small business programs or an individual small business, whether or not the affected small business is in the 8(a) program. The adverse impact concept is designed to protect small business concerns which are performing Government contracts awarded outside the 8(a) program. Adverse impact does not apply to "new" requirements. A new requirement is a requirement which has not been previously procured by the relevant procuring agency. Where a requirement is new, no small business could have performed the requirement and, thus, an impact determination need not be performed.

The purpose of the regulation is to protect incumbent small business contractors. See Atlantic Coast Contracting, Inc., B-260686, July 13, 1995, 95-2 CPD ¶ 19 at 3.

The Forest Service and the SBA report that the determinations of no adverse impact to small businesses were made because the projects in question here constitute new requirements. The agencies assert that timber stand improvement requirements generally constitute new requirements because the work being performed usually involves improvement to various timber stands in different geographical areas within the forests. That is, for both acquisitions, the Forest Service found, and reported to the SBA, that no small business contractors had performed this work in

these particular timber stands within the previous 24-month period, and the SBA therefore determined that these were new requirements and thus did not have an adverse impact on small businesses.

Mr. Blood objects to the agencies' adverse impact determinations, arguing that the adverse impact determinations are not documented, and that the requirements are not new requirements because the Forest Service has periodic recurring requirements for timber stand improvements in the national forests in question here, many of which are performed by small businesses outside the 8(a) program.

Although we agree with Mr. Blood that the documentation of the decisions to accept these requirements under the 8(a) program did not specifically identify the requirements as new requirements, we find the Forest Service and the SBA can reasonably view timber stand improvements conducted in different geographical areas within the forests to be separate, rather than recurring, requirements. As indicated by the Forest Service, these requirements become necessary after the agency has identified a particular stand of trees for growth, development, and commercial sale, and when this becomes necessary the agency's practice is to enter into various contracts for the different timber stands. While the Forest Service has an overall recurring need for timber stand improvement, the agency has been procuring a separate and new requirement each time the actual geographical location changes. Under the circumstances, we find nothing improper in the Forest Service's and the SBA's determinations that the requirements in question here are new requirements, such that there is no adverse impact on small businesses. See American Consulting Servs., Inc., supra, at 11-12.

In sum, we find that the agencies properly placed these requirements under the 8(a) program.

The protests are denied.

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