



Comptroller General  
of the United States

Washington, D.C. 20548

141743

# Decision

**Matter of:** ASI Universal Corporation, Inc.

**File:** B-239680

**Date:** July 3, 1990

Yolanda V. Ryan, Esq., Kelley & Ryan, for the protester.  
Daniel J. Piliero II, Esq., and Pamela J. Mazza, Esq.,  
Piliero, Tobin & Mazza, for R&E Electronics, Inc., an  
interested party.

S.J. Evans, National Aeronautics and Space Administration,  
for the agency.

Mona K. Mitnick, Esq., and Robert N. Wong, Esq., Office of  
General Law, for the Small Business Administration.

Paul E. Jordan, Esq., Paul Lieberman, Esq., and John F.  
Mitchell, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

## DIGEST

Where protester would not be eligible to participate under a set-aside pursuant to section 8(a) of the Small Business Act, protest challenging eligibility of proposed awardee and lack of competition is dismissed. The protester lacks the requisite direct economic interest to be considered an interested party since it would not be eligible to compete for the contract even if the protest were sustained.

## DECISION

ASI Universal Corporation, Inc. protests the proposed award of a contract to R&E Electronics, Inc., under request for proposals No. 10-6-0031-9, issued by the National Aeronautics and Space Administration (NASA). The procurement, for operation and maintenance of the administrative telephone system at the John F. Kennedy Space Center, was conducted under the Small Business Administration (SBA) section 8(a) program (15 U.S.C. § 637(a) (1988)).

We dismiss the protest because ASI is not an interested party under our Bid Protest Regulations. See 4 C.F.R. § 21.3(m) (1990).

048909/141743

As amended by section 303 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656, 102 Stat. 3853), effective October 1, 1989, 15 U.S.C. § 637(a)(11) requires competition of 8(a) procurements when certain enumerated thresholds are met. ASI contends that an SBA regulation (13 C.F.R. § 124.311(b) (1990)) violates the amended statute because it exempts section 8(a) requirements which have been accepted for the 8(a) program prior to October 1, 1989. ASI also challenges the eligibility of the proposed awardee and maintains that if the sole-source award is disallowed, it would participate in the competition.

The procurement at issue is a "local buy" requirement, a service to be purchased to meet the specific needs of one user in one location. 13 C.F.R. § 124.100. According to 13 C.F.R. § 124.311(h)(3), for local buy competitions, the appropriate SBA official will determine whether to limit competition to section 8(a) program participants located within the boundaries of one or more districts or the entire region, and only those participants within the appropriate boundaries are eligible to submit offers. The regulation further provides, in relevant part, that:

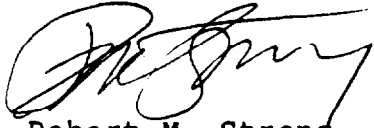
"If SBA determines, however, that there is not a reasonable expectation that at least two participants within such region will submit offers, SBA may authorize the procuring agency to accept offers from eligible Program Participants in one or more other adjacent regions. Without such authorization, Program Participants located outside the relevant SBA regional boundaries which submit offers shall be considered ineligible."

NASA and the SBA inform us that at the time the procurement was accepted by the SBA for the section 8(a) program, at least two 8(a) concerns within the relevant region (Region IV) were eligible for the requirement. Since then, two other Region IV firms have been approved. ASI, a Texas firm, is located in SBA Region VI. According to the SBA official who would determine the applicable boundaries for competition, if the procurement were subject to competition, it would be open only to program participants in Region IV.

Under our Bid Protest Regulations, 4 C.F.R. § 21.1(a), a protester must have a direct economic interest which is affected by the award of a contract in order to be considered an interested party. Here, even if ASI's protest were sustained, it would not be eligible to compete for the

contract in question since it is not a firm located within the relevant geographical boundaries. See E.L. Hamm & Assocs., Inc.--Reconsideration, B-231444.2, Aug. 19, 1988, 88-2 CPD ¶ 160.

Accordingly, the protest is dismissed.



Robert M. Strong  
Associate General Counsel



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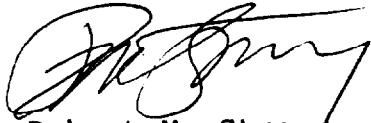
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