

**DECISION**

*PL 1*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-208552**DATE:** October 14, 1982**MATTER OF:** Whitehead Roofing & Insulation, Inc.**DIGEST:**

Protester's contention that it improperly was denied the award of a small business set-aside, because the contracting agency and a district office of the Small Business Administration did not provide an opportunity for the protester to provide information concerning its size status before a determination adverse to it was made, is dismissed as academic where the protester subsequently presented its case to the SBA Size Appeals Board, which affirmed the district office's determination.

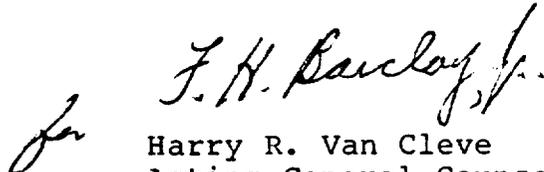
Whitehead Roofing & Insulation, Inc. protests the award of a contract to another firm under invitation for bids (IFB) No. DACA65-82-B-0036, issued by the U.S. Army Corps of Engineers. The solicitation, a small business set-aside, called for bids on energy conservation improvements to be made at the United States Military Academy, West Point, New York.

According to Whitehead, it was the low bidder at the June 25, 1982 bid opening, but the Corps questioned whether the firm qualified as a small business and advised Whitehead that award would be delayed pending a determination by the Small Business Administration's (SBA) Kansas City Regional Office. On August 2, Whitehead learned indirectly that an award had been made to the second low bidder, apparently based on a determination that Whitehead was other than a small business. Whitehead contends that it should not have been denied the award based on this determination since it was never afforded an opportunity to present evidence establishing its small business status, and because the contracting officer failed to comply with applicable procurement regulations in referring this matter to SBA. We dismiss the protest.

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Subsequent to filing its protest in our Office, Whitehead appealed the district office's determination to SBA's Size Appeals Board, the body with final administrative authority to consider such appeals. 13 C.F.R. § 121.3-(6)(a) (1982). The Board upheld the district office's determination after Whitehead was given an opportunity to present its case. Under these circumstances, Whitehead was not prejudiced by the alleged actions of the Corps and SBA, and the question whether these agencies failed to comply with applicable regulations thus is academic: Whitehead would remain ineligible for the award even if we sustained its protest. It is our Office's policy not to review academic protests. PhilCon Corp., B-207082, July 23, 1982, 82-2 CPD 70. Accordingly, we will not consider the merits of Whitehead's protest.

The protest is dismissed.

  
Harry R. Van Cleve  
Acting General Counsel