

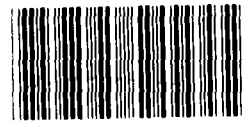
GAO

Briefing Report to Congressional Requesters

May 1987

AIR FORCE

**Enlisted Recruits'
Initial Haircuts**



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National Security and
International Affairs Division

B-226613

May 19, 1987

The Honorable Dan Daniel
Chairman, Readiness Subcommittee
Committee on Armed Services
United States House of Representatives

The Honorable Vic Fazio
United States House of Representatives

This briefing report responds to your October 14, 1986, request that we examine the contracting for initial haircuts given to enlisted recruits at Lackland Air Force Base, Texas, including

- the Air Force's basis for awarding a new contract for these services, rather than continuing with a memorandum of understanding with the Army and Air Force Exchange Service (AAFES) to provide the haircuts, and
- the impact of the Air Force's action on AAFES contributions to the Department of Defense's (DOD's) Morale, Welfare and Recreation (MWR) fund.

Readiness Subcommittee staff also asked for information on appropriated-fund support to MWR activities at Lackland Air Force Base because of the Subcommittee's interest in the level of such support.

At the time of your request, Gino Morena Enterprises (GME), the AAFES concessionaire that had been providing the initial haircuts, had filed a protest with us, objecting to the new contract award. As agreed with Readiness Subcommittee staff we did not begin this review until after the protest had been decided. On February 5, 1987, we denied GME's protest, because we concluded that GME was not improperly excluded from competing for the award. We also concluded, however, that since the Air Force justified its award of the contract in part on the urgent need to continue the haircut services, the inclusion of options to extend the contract were not justified and should not be exercised. Instead, we believed that the Air Force should obtain haircut services through a competitive solicitation.

The Air Force subsequently questioned both the status of GME to file a protest in the matter and our recommendation that the options contained in the contract not be exercised and requested us to reconsider our decision. Upon reconsideration, we affirmed our prior decision.

To respond to your request, we visited Lackland Air Force Base, the AAFES Alamo Region, the Office of the Secretary of Defense (OSD), and Air Force Headquarters to gather necessary data and discuss with agency officials matters relating to the initial recruit haircut operation at Lackland Air Force Base.

We discussed a draft of this report with Air Force, AAFES, and OSD officials and have incorporated their comments where appropriate. As you requested, we did not obtain official agency comments. We performed our evaluation in accordance with generally accepted government auditing standards, during the period February to March 1987.

In summary, we found that:

- Although the Air Force was satisfied with GME's performance, it believed it could obtain a lower haircut price by awarding a competitive contract rather than continuing to contract with AAFES. The new contract price was \$.95 per male haircut versus what Air Force officials said was GME's projected price of \$2.05--up from \$1.20 charged in 1986.
- GME was paying a concessionaire fee to AAFES of 25.28 percent of gross sales. AAFES then contributed part of this fee to the MWR fund. The new contractor does not pay such a fee to AAFES, and the estimated loss to the MWR fund is about \$9,500 for fiscal year 1987.
- The Air Force estimates that it provided about \$965,000 in calendar year 1986 in both direct and indirect appropriated-fund support to 12 non-appropriated fund instrumentalities (NAFIs) supporting local MWR activities at Lackland Air Force Base.

Appendix I provides background information; appendix II discusses the specific issues you raised; and appendix III is our February 5, 1987, decision on GME's bid protest.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from the date of issue. At that time, we will send copies of this report to the Chairmen of

B-226613

the House and Senate Committees on Appropriations and Armed Services; the Honorable Henry B. Gonzalez and the Honorable Albert G. Bustamante, United States House of Representatives; the Secretaries of Defense, the Air Force, and the Army; and the Director, Office of Management and Budget. Copies will also be made available to other interested parties upon request. If you need further information, please call me at 275-8412.

A handwritten signature in black ink, appearing to read "Martin M. Ferber". The signature is fluid and cursive, with the first name "Martin" being the most prominent.

Martin M Ferber
Associate Director

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ABBREVIATIONS

AAFES	Army and Air Force Exchange Service
BMTS	Basic Military Training School
GAO	General Accounting Office
GME	Gino Morena Enterprises
MCRD	Marine Corps Recruit Depot
MWR	Morale, Welfare and Recreation
NAFI	Non-Appropriated Fund Instrumentality
NCO	Non-Commissioned Officer
NRTC	Navy Recruit Training Center

BACKGROUND

This appendix provides information on (1) recruits' initial haircuts in all the military services, and (2) haircut services at Lackland Air Force Base and GME's role in providing those services. Additional background information on the specifics of the Air Force contract for initial haircuts is contained in appendix III.

INITIAL HAIRCUTS FOR ENLISTED RECRUITS

The Air Force, like all the other services, now requires recruits to pay for their first haircuts. Previously the Air Force took the position that the government should pay for the initial "short" haircut because it was part of a recruit's training indoctrination. Because of objections by the Readiness Subcommittee, House Armed Services Committee, appropriated funds are no longer used for this initial haircut.

Table I.1 provides information by service on initial haircuts for enlisted recruits.

Table I.1: Summary Information by Service on Initial Haircuts for Enlisted Recruits

<u>Description</u>	<u>Army</u>	<u>Navy</u>	<u>Air Force</u>	<u>Marine Corps</u>
Price of first haircut ^a	\$1.85up	\$1.30up	\$.95	\$1.60up
No. of recruits per year	139,730	85,500	62,000	43,700
No. of recruit bases	9	3	1	2
Is it operated by the exchange system?	Yes	Yes	No	Yes
Does barbershop contribute earnings to MWR?	Yes	Yes	No	Yes
Does barbershop pay utilities? ^b	Yes	Yes	Yes	Yes

^aFor comparison purposes this is the price of a haircut for males. The price for females is higher.

^bUtilities are paid directly by Navy and Marine Corps exchanges and reimbursed to the Air Force by its concessionaire. Utilities are paid indirectly as part of the concession fee at AAFES-operated shops.

As shown in table 1.2, the \$.95 charge per haircut at Lackland Air Force Base was the lowest haircut price as of March 1987.

I.2: Recruit Bases and Initial Haircut Concessionaires

<u>Recruit Bases</u>	<u>No. of Recruits</u>	<u>Price</u>	<u>Concessionaire</u>
AIR FORCE:			
Lackland, TX	62,000	\$.95	Manuel J. Rodriguez
ARMY:			
Fort Dix, NJ	36,140	a	Gino Morena Enterprises
Fort Knox, KY	18,070	2.15	Gene's Enterprises
Fort Leonard Wood, MO	22,070	1.85	Robert Klima
Fort Campbell, KY	800	1.85	Gene's Enterprises
Fort Jackson, GA	43,170	a	Gino Morena Enterprises
Fort McClellan, AL	10,070	a	Robert Klima
Fort Sill, OK	3,450	2.30	Gino Morena Enterprises
Fort Bliss, TX	4,960	2.45	Bar Bliss
Fort Polk, LA	<u>1,000</u>	a	Robert Klima
Total	139,730 =====		

NAVY:

Navy Recruit Training Center Orlando, FL	20,000	\$1.75	Navy Exchange ^b
Navy Recruit Training Center Great Lakes, MI	38,000	1.30	Navy Exchange ^b
Navy Recruit Training Center San Diego, CA	<u>27,500</u>	2.25	Navy Exchange ^b
Total	85,500 =====		

MARINE CORPS:

Marine Corps Recruit Depot, San Diego, CA	21,700	\$1.60	Gino Morena Enterprises
Marine Corps Recruit Depot, Parris Island, SC	<u>22,000</u>	1.63	Marine Exchange ^b
Total	43,700 =====		

^aLocal market is surveyed and average price determined. Then the recruit is charged 70 percent of average price in the local market.

^bConcessionaires do not operate these shops. Barbers are employees of either the Navy Resale Services and Support Office or the Marine Corp Exchange System.

HAIRCUT SERVICES AT
LACKLAND AIR FORCE BASE

GME has operated most of the barber shops at Lackland since about 1970. Before October 1, 1986, GME, as an AAFES concessionaire, operated seven of Lackland's nine barber shops. (Neither AAFES nor GME manages the barber shops at the officers' and non-commissioned officers' (NCOs') clubs.) Currently, GME operates six of the nine barber shops and all three of the beauty shops.

GME is one of the few AAFES concessionaires that is not a small business. GME operates 77 of AAFES's 522 barber shops and 95 of its 195 beauty salons in the continental United States. In 1986, these GME operations had gross sales of over \$30 million.

As shown in table II.1, the loss to the MWR fund as a result of GME's no longer providing the initial haircut would be about \$9,500 in fiscal year 1987. (The loss would be greater if GME had raised its prices as projected.)

Table II.1: Estimated loss to DOD's MWR Fund

<u>Customer</u>	<u>Price</u>	<u>No. of Customers</u>	<u>Annual Sales</u>
Male	\$1.20	60,000	\$72,000
Female	2.70	2,000	5,400
Incarcerated Persons	3.40	10	34
		=====	-----
		62,010	\$77,434
AAFES percentage of annual gross sales			x25.28%

Estimated annual fee to AAFES			\$19,575
Less: AAFES utilities and administrative cost (3.15%)			617
AAFES net earnings			<u>18,958</u>
Estimated AAFES contribution to MWR (50%)			\$ 9,479
			=====

The AAFES memorandum of understanding with BMTS for providing initial haircuts to recruits only authorized AAFES to provide the haircuts through September 30, 1986. The AAFES contract with GME, however, extended beyond this date. As a result, GME filed a claim with AAFES on February 6, 1987. The resolution of this claim could further affect AAFES contributions to the MWR fund by reducing its net earnings. GME has asked for

- (1) a \$54,223.83 one-time payment,
- (2) an 11-percent reduction in the fee it pays AAFES on the remaining six barber shops it operates, and

Was the Air Force Basic Military Training School at Lackland Air Force Base Satisfied With AAFES and GME?

BMTS officials told us that they were satisfied with the service and responsiveness of GME as an AAFES concessionaire for providing initial haircuts to recruits at Lackland Air Force Base. However, as long ago as 1983, the San Antonio Contracting Center sought to conduct a competitive procurement to provide initial haircuts to recruits. The Center issued a request for proposals as a small-business set aside, which GME protested to the Center. The request for proposals was later cancelled. The reasons for the cancellation were unclear, but it appears there was some question regarding the Air Force's authority to award a contract to an entity other than AAFES for this AAFES-type activity.

In November 1983, the Air Force and AAFES established a memorandum of understanding that allowed GME to continue to provide the initial haircuts. Then, in September 1986, the Commander, BMTS, was informed by AAFES's exchange manager that GME planned to increase the price of the initial haircut for recruits from \$1.20 to \$2.05, effective October 1, 1986.

AAFES officials told us that they did not think that Lackland's contracting competitively for the haircut services would establish a precedent for other installations to award service contracts to other than AAFES. They believed that the Lackland situation was unique and an isolated initiative.

Why Could AAFES Not Bid?

AAFES officials told us that, although AAFES was providing haircut services through a memorandum of understanding with BMTS, AAFES could not bid when the Air Force decided to contract for the services. Regulation AR 60-20/AFR 147-14 (Sec. 2-7.a.) provides that AAFES may not submit proposals in response to procurement actions by other government agencies to obtain supplies or services.

IMPACT ON CONTRIBUTION TO DOD's MWR FUND

AAFES receives a fee from each of its concessionaires. In the case of GME's initial haircut business, AAFES received 25.28 percent of GME's annual sales. AAFES used part of this fee to pay the utilities and administrative costs for GME's barber shop. AAFES then distributed 50 percent of its net earnings to the MWR fund.¹

¹AAFES uses the remaining 50 percent for capital expenditures (i.e., new construction, facility improvements, and equipment purchases, etc.).

- Riding Club (horse training facilities and stall rentals for members), and
 - Rod and Gun Club (skeet and trap ranges, deer leases, bird leases for members);
- revenue-generating activities:
- central base fund (maintains MWR contributions from AAFES and includes both revenue and incidental revenue-generating activities, such as the bowling center, recreation center, child care center, gyms, and golf courses),
 - temporary lodging facility (family housing for permanent change of station personnel),
 - billeting fund (bachelor officers' quarters and temporary lodging for transit personnel and personnel on travel duty), and
 - class VI store (packaged liquor store);
- non-revenue generating activities:
- isolated unit fund (funds for recruiting detachments at various locations),
 - non-appropriated fund financial management branch (provides financial management support to all 12 NAFIs), and
 - commandant school mission support fund (funds provided from Air Training Command for ceremonial activities).

Except for the barber shop operations at the NCO and officers' clubs, none of the above MWR activities are contracted out to concessionaires, but instead are operated by MWR employees.

According to the Air Force, the total amount of direct and indirect appropriated-fund support for the MWR activities supported by the 12 NAFIs is approximately \$965,000 annually. The direct support accounts for approximately \$608,000--or about two-thirds of the support funds--and includes military and civilian pay, supplies, and equipment. The indirect support--the remaining \$357,000--includes financial management, environmental health services, security police, communications, data automation, and civil engineering.

We did not independently verify this figure or obtain a breakout of the support cost attributable to each MWR activity supported by these NAFIs.

- 3) a 2-year contract extension due to lost income, unamortized equipment investment, and legal fees.

BMTS officials told us that they were not aware that AAFES had contracted with GME beyond September 30, 1986, and that, in any event, whatever contractual arrangements AAFES had with its concessionaire could not contractually bind BMTS.

APPROPRIATED-FUND SUPPORT TO NONAPPROPRIATED-FUND
ACTIVITIES MANAGED BY LACKLAND AIR FORCE BASE

Support to GME

GME does not pay utilities directly and has free use of operating space. AAFES uses part of the GME fee it receives to reimburse the Air Force for the cost of utilities.

Support to Manuel J. Rodriguez

The contract of the new barber, Manuel J. Rodriguez, requires him to pay utilities, initially estimated at about \$115 per month. He has free use of the barber shop space in building number 5725, which was built with appropriated funds.

During our visit to Lackland Air Force Base in March 1987, we found that Mr. Rodriguez had not been billed since he began operations in October 1986. We brought this to the attention of Lackland officials and were told they had overlooked this and would be billing Mr. Rodriguez \$906.50 (\$129.50 per month) for the period October 1986 through April 1987, and would continue to bill him for the remainder of the contract period.

Nonappropriated-Fund Activities
Receiving Appropriated Fund Support
From Lackland Air Force Base

We identified 12 nonappropriated fund instrumentalities which support MWR activities and receive both direct and indirect appropriated-fund support from Lackland Air Force Base. A brief description of the 12 NAFIs follows:

-- membership organizations:

- Officer Training School Open Mess (bar and dining room facilities for officer trainees only),
- Officers' Open Mess (bar, dining facilities, and concessionaire barber shop for officers only),
- NCO Open Mess (bar, dining facilities, and concessionaire barber shop for NCOs only),

COMPTROLLER GENERAL DECISION B-224235,
FEBRUARY 5, 1987



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gino Morena Enterprises

File: B-224235

Date: February 5, 1987

DIGEST

1. Protest jurisdiction of the General Accounting Office extends to protests filed by interested parties challenging procurements conducted by federal agencies and does not turn on whether appropriated funds are involved.
2. Where the provisions of the Armed Services Procurement Act do not apply to a procurement by a defense agency because payment would not be made from appropriated funds, the General Accounting Office will review the actions of the agency to determine whether it acted reasonably.
3. Where the agency discovered just prior to award of a contract under a competitive small business set-aside solicitation that appropriated funds would not be available to fund the contract, and the agency determined that its need for the required services was urgent, the agency acted reasonably in awarding a concession contract that would not require appropriated funds to the offeror who had been low under the solicitation.
4. Where an award is justified on basis of urgency, the inclusion in the contract of options to extend the contract is not justified.

DECISION

Gino Morena Enterprises (GME) protests the award by the Basic Military Training School (BMTS), Lackland Air Force Base, Texas, of concession agreement No. F41800-86-S-0008 to Manuel J. Rodriguez. We deny the protest because, as discussed below, we conclude that GME was not improperly excluded from competing for award of the concession. We also conclude, however, that since the agency justified the award at least in part on urgent circumstances, the inclusion of options to extend the agreement was not justified. The options therefore should not be exercised.

Army and Air Force Exchange

The AAFES operation at Lackland does not receive direct appropriated-fund support for the service contracts it awards (such as retail shops, theaters, and dry cleaners). However, AAFES does receive indirect appropriated-fund support, such as security police and environmental health services the base provides.

AAFES does receive appropriated-funds support for some of its operations. For fiscal year 1985 (fiscal year 1986 data not yet available), AAFES received approximately \$127 million, most of which supported its overseas operations.

of the subcontract between the AAFES and GME.^{2/} The protester also complained that there was no authority for providing for these services other than through the AAFES; that the set-aside was improper; and that the solicitation did not contain required minimum wage provisions, and was otherwise defective. The contracting officer informed GME that its protest was considered moot after the solicitation had been canceled. GME then filed a protest with this Office, contending that the concession agreement with Mr. Rodriguez constituted an improper sole-source contract and reiterating many of the issues raised earlier with the agency. GME's basic complaint is that it was improperly denied an opportunity to compete for the initial haircut concession contract.

The Air Force argues that this Office is without jurisdiction to decide this protest because the concession agreement executed by the BMTS is not a procurement contract. The agency also questions our authority to review this matter on the basis that the government will derive no benefit or income from the agreement.

On the merits, the Air Force's position is that it violated no statute or regulation and that it acted reasonably under the circumstances in awarding the concession agreement. The agency points out that it first attempted to procure the initial haircut services through a small business set-aside, appropriated funds contract. Nine solicitation packages were distributed to prospective offerors, including the AAFES, which did not submit an offer. The agency received three proposals, with prices for the base year ranging from \$.95 to \$1.20 per haircut. The agency says that it decided to compete its requirement for initial haircuts rather than simply award a noncompetitive contract to the AAFES based on the requirement of the Competition in Contracting Act of 1984 (CICA), title VII, Division B, Pub. L. 98-369, 98 Stat. 1175 et seq., that agencies obtain full and open competition when contracting for goods and services. In this regard, the agency cites our decisions holding that a contract with an AAFES is similar to a contract with a nongovernmental entity, Obtaining Goods and Services from Nonappropriated Fund Activities Through Intra-Departmental Procedures, 58 Comp. Gen. 94 (1978), 78-2 CPD ¶ 353, and therefore requires adequate

^{2/} The RFP provided, as does the concession agreement, for the initial haircut services to be performed at the same location at Lackland where GME had been operating a barber-shop.

BACKGROUND

The agreement requires the concessionaire to provide initial haircuts for BMTS basic trainees and incarcerated personnel at a designated location at Lackland. The concessionaire is to furnish all equipment and supplies and reimburse the BMTS for utilities used. The agreement contemplates that the concessionaire will charge those receiving the haircuts for these services at rates contained in the agreement. The agreement is for a 1-year base period and contains two 1-year options.

The concession agreement was awarded following the cancellation of request for proposals (RFP) No. F41800-86-R-7014, a total small business set-aside solicitation issued by the San Antonio Contracting Center for the initial haircut services at the BMTS. The solicitation envisioned that the Air Force would pay for these services. The Center canceled the solicitation on September 25, 1986, after the BMTS informed it that, contrary to earlier assumptions, no appropriated funds would be available to fund a contract for these services. However, since the BMTS needed to have someone ready to provide the services by October 1, BMTS signed the concession agreement with Mr. Rodriguez, the low offeror under the canceled RFP. Under the concession agreement the trainees must pay for the haircuts.

Prior to October 1, initial haircuts for the BMTS recruits were provided by the Army and Air Force Exchange Service (AAFES), a nonappropriated fund instrumentality, under a 1983 contract between the Air Force and the AAFES.^{1/} This contract, as extended by the exercise of option provisions, expired on September 30. The AAFES had arranged for the performance of the haircut services by subcontracting with the protester. The contract between the AAFES and the protester is not scheduled to expire until November 15, 1987. GME also operates several other barbershops at Lackland and elsewhere under contract with the AAFES.

When the Center issued the small business set-aside RFP, GME filed a protest with the contracting officer complaining that an award under that solicitation would result either in duplication of the initial haircut services or in a breach

^{1/} This contract also provided for the AAFES to provide "follow-on" (i.e. second and third) haircuts for male recruits, and estimated that the number of follow-on haircuts would be five percent of the estimate for the initial haircuts.

opportunity to do so and that it will compete for an award if we should recommend that the agency resolicit. See Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1986). Thus, all the requisite circumstances for the exercise of our protest jurisdiction exist.

Applicable law and standard of review

The protester bases much of its complaint on alleged violations of sections of the Armed Services Procurement Act codified in chapter 137 of title 10 of the United States Code. As amended by CICA, these provisions require, among other things, that defense agencies use advance procurement planning, 10 U.S.C. § 2305(a)(1)(A)(ii) (Supp. III 1985), and obtain full and open competition through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), when contracting for goods or services. The protester also cites 41 U.S.C. § 253(f)(5)(A) (Supp. III 1985), which provides that in no case may an executive agency contract for property or services using other than competitive procedures because of a lack of advance planning.

The provisions cited by the protester are not directly applicable, however, to the agency's award of the concession agreement in this case. The provisions of chapter 137 of title 10 apply only to those procurements by defense agencies for which payment is to be made from appropriated funds. 10 U.S.C. § 2303(a). Where appropriated funds are not directly involved, the Armed Services Procurement Act does not apply. 58 Comp. Gen., *supra*, at 98. Further, 41 U.S.C. § 253, which is section 303 of the Federal Property and Administrative Services Act of 1949 (FPASA), also is inapplicable based on section 302 of the FPASA which excludes defense agencies from the provisions of title III of that Act. 41 U.S.C. § 252(a) (1982).

Where the basic procurement statutes are not applicable to a procurement that is within our protest jurisdiction, we review the actions taken by the agency to determine whether they were reasonable. See Flexsteel Industries, Inc., et al., B-221192 et al., Apr. 7, 1986, 86-1 CPD ¶ 337 (protest of a Department of State procurement not subject to the FPASA denied where the agency's actions were not shown to lack a reasonable basis). We shall apply that standard here.

Merits

In our view, the award by BMTS of the concession agreement to Mr. Rodriguez was reasonably based. Because its contract

justification if made on a sole-source basis. Army Request for Advance Decision, B-148581 et al., Sept. 2, 1980, 80-2 CPD ¶ 162.

The agency justifies the award of the concession without conducting an unrestricted competition basically on two grounds: first, by the time the set-aside RFP had been canceled, the need to arrange for initial haircut services had become urgent; second, the BMTS Commander decided to base the award of the concession contract on the results of the set-aside competition in furtherance of the congressional policy that a fair proportion of contracts be awarded to small business concerns. The agency recognizes that Department of Defense (DOD) Instruction 1330.18, Aug. 28, 1974, establishes a policy that military exchanges are to be the primary sources of services on defense installations, but notes that the policy does not state that exchanges are to be exclusive sources. In this connection, the agency points out that other barbershops at Lackland are operated by nonappropriated fund activities other than the AAFES.

ANALYSIS

Jurisdiction

The authority of this Office to decide protests is based on CICA, 31 U.S.C. § 3551 et seq. (Supp. III 1985). Our jurisdiction extends to a protest filed by an interested party challenging a solicitation issued by a federal agency for a proposed contract for property or services or the award or proposed award of such a contract, Artisan Builders, 65 Comp. Gen. 240 (1986), 86-1 CPD ¶ 85, and does not turn on whether appropriated funds are involved. T.V. Travel, Inc., et al.--Request for Reconsideration, 65 Comp. Gen. 109 (1985), 85-2 CPD ¶ 640; Spectrum Analysis & Frequency Engineering, B-222635, Oct. 8, 1986, 86-2 CPD ¶ 406.

In this case, the concession agreement to which the protester objects was awarded by the BMTS Commander. No one contends that BMTS is not a federal agency. Further, regardless of how the arrangement is styled, the concession agreement is a contract for services under which the BMTS will satisfy its need to obtain initial haircuts for its recruits--which the agency insists is an important aspect of the training experience--and therefore constitutes a procurement contract. See T.V. Travel, Inc., et al., 65 Comp. Gen., supra. Also, GME is an interested party because GME asserts that it would have submitted an offer had the agency provided it the

The protester contends that the concession contract itself was not awarded as a small business set-aside and that therefore it was improper not to solicit GME. In this connection, the protester points out that paragraph 1-6c(2) of Air Force Regulation 176-9, August 17, 1984, provides that the Small Business Act does not apply to contracts not involving appropriated funds. It is clear from the record, however, that the agency decided to maintain this procurement action as a set-aside even after changing the manner in which the contractor would be paid. Although the Small Business Act may not have applied, we cannot say that the agency acted unreasonably in choosing nevertheless, as a matter of policy, to continue with the set-aside.

With respect to the protester's contention that the regulations required BMTS to contract for initial recruit haircuts through the AAFES, the regulation states that "AAFES will be the primary source of nonsubsistence resale merchandise and services on Army and Air Force installations." The same statement appears in the DOD instruction cited by the agency. The regulations seem to set forth a general policy rather than a specific prohibition against obtaining services in any instance from a source other than the AAFES. In both regulations, the statements are made in the context of imposing limitations on sales activities by other nonappropriated fund instrumentalities, and are not directed at how an agency is to conduct its procurements.

Finally, the protester contends that if the award of the concession agreement without soliciting GME was justified on the basis of urgency, the agreement should have a limited duration and the options to extend the agreement should not be exercised. We agree. In IMR Systems Corp., B-222465, July 7, 1986, 86-2 CPD ¶ 36, the agency did not comply with the CICA requirement to solicit as many sources as practicable when using other than competitive procedures on the basis of urgency. We said that while the urgent circumstances of that case justified the award of a contract without soliciting other sources, the inclusion of options to extend the contract was not justified. While CICA does not apply here, we think the rationale expressed in IMR Services Corp. does. The exercise of the options to extend should not be considered and, by letter of today, we are so advising the Secretary of the Air Force.

Because we conclude that the agency acted reasonably in awarding the concession agreement without soliciting the protester, we deny the protest.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel

with the AAFES for initial haircuts for its recruits was expiring, BMTS initially requested the Center to procure these services, with the expectation that appropriated funds would be available. The Center issued a competitive solicitation, restricting participation to small businesses. The agency was permitted under 10 U.S.C. § 2304(b)(2) to conduct a competitive procurement limited to small business concerns in furtherance of section 15 of the Small Business Act, 15 U.S.C. § 644(a) (1982). The Center reports that it distributed solicitations to nine potential offerors, including AAFES, which apparently qualifies as a small business concern, but not including GME, which apparently does not. The agency received offers from three firms, AAFES not among them. Following a preaward survey of the low offeror's ability to perform the contract, BMTS learned that no appropriated funds would be available to pay for the recruits' initial haircuts and so informed the Center, which canceled the solicitation on September 25.

BMTS still had a need for the services, however, and its existing contract with AAFES was due to expire on September 30. What the protester contends the BMTS was required to do at this point is not entirely clear. On the one hand, the protester complains that it was not solicited, and says that it would have submitted an offer had it been invited to do so. On the other hand, the protester cites Air Force Regulation (AFR) 147-7, March 15, 1984, which contains some of the same provisions as the DOD instruction cited by the agency, as requiring that the AAFES provide all barber services at Lackland, thus suggesting that BMTS should have awarded a sole-source contract to the AAFES. We find no merit in either contention.

The appropriated fund problem came to light only after the Center, at the request of BMTS, had conducted a competitive procurement and was ready to award a contract. While the protester apparently believes that cancellation by the Center of the set-aside solicitation required that the results obtained under that competitive solicitation be ignored and that new competition be sought, we do not agree. As we stated above, the competition statutes did not apply once it was determined that appropriated funds would not be used, and we think that under what BMTS considered as urgent circumstances,^{3/} it acted reasonably in basing the award of the concession agreement on the results of the competition obtained under the recently canceled RFP.

^{3/} Shortly after GME filed its protest with this Office, the agency determined under 31 U.S.C. § 3553(c)(2)(A) (Supp. III 1985) that its requirement for initial haircuts for the recruits was an urgent and compelling circumstance that would not permit waiting for the decision of this Office on the protest.

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ISSUES CONCERNING THE CONTRACTING FOR
INITIAL HAIRCUTS FOR ENLISTED RECRUITS
AT LACKLAND AIR FORCE BASE

BASIS FOR AWARDING A NEW CONTRACT RATHER
THAN CONTINUING TO OBTAIN HAIRCUT SERVICES
THROUGH AAFES

The Air Force Basic Military Training School (BMTS) decided not to continue with AAFES because of projected price increases for initial recruit haircuts. Once this decision was made, the training school was required to submit its requirement to the San Antonio Contracting Center. The Center then sought a competitive procurement under the Competition in Contracting Act of 1984. In doing so, it was required to consider setting aside the procurement exclusively for small-business participation under section 19.502-2 of the Federal Acquisition Regulation, which requires a set aside if the contracting officer determines that there is a reasonable expectation that offers will be obtained from at least two responsible small-business concerns and that the award will be made at a reasonable price. The Center decided on a small business set-aside, and since GME is not a small business, it was not eligible to compete for the award.

In our bid protest decision we concluded that the DOD regulations which state that exchange services will be the primary source of resale services on military installations, set forth a general policy rather than a specific requirement. We further concluded that GME was not improperly excluded from competing for the contract. Under what the Air Force considered urgent circumstances (the short time left after the cancelling of appropriated-fund support with the need to continue to provide the haircut services), it acted reasonably in basing the award of the new contract on the results of the offers it had received in response to a solicitation that contemplated using appropriated funds. We also concluded, however, that since the Air Force justified the award of the contract in part on the urgent need to continue the haircut services the inclusion of options to extend the contract were not justified and should not be exercised. Instead, we believed that the Air Force should again seek competitive haircut services. The Air Force subsequently questioned both the status of GME to file a protest in the matter and our recommendation that the options contained in the contract should not be exercised. Upon reconsideration, we affirmed our prior decision.

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