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United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-195267.3

March 24, 1980

The Honorable John Glenn  
United States Senate

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Dear Senator Glenn:

Reference is made to your letter of March 3, 1980, expressing your interest in the protest filed by Power Testing, Incorporated, which was the subject of our decision dated November 13, 1979, previously furnished to you. In that decision we stated that we considered the issues raised by Power Testing to be academic because the Department of Transportation had canceled the protested solicitation.

Power Testing had protested, among other things, that the Department of Transportation was procuring for the repair and maintenance of electrical substations on a sole-source basis. As a result of Power Testing's protest, the Department of Transportation decided to cancel the protested solicitation and to reprocure for the required services on a competitive basis. Despite this corrective action on the part of the Department of Transportation, Power Testing wanted our Office to decide whether the Department of Transportation should set aside all similar procurements for exclusive participation by small businesses and whether the Department of Transportation used the correct size standard in the canceled solicitation. We declined to do so.

It is our policy not to decide issues raised in a protest when those issues have been rendered academic because the protested solicitation has been canceled by the agency. Generally, we do not decide issues merely because a protester desires to know whether the agency was right or wrong or because the protester



wishes us to issue guidelines for use in similar procurements in the future. Under our Bid Protest Procedures, 4 C.F.R. part 20 (1979), a party must be "interested" in order for the protest to be considered. This requirement serves to ensure the party's diligent participation in the protest process so as to sharpen the issues and provide a complete record upon which the correctness of the challenged procurement may be decided. Generally, in determining whether a party has the required "interest," consideration is given to the nature of issues raised and to the direct or indirect benefit or relief sought by the protester. In the present case, when the Department of Transportation agreed with Power Testing on some of the issues raised and canceled the sole-source procurement, the other issues became academic. Power Testing's interest in possible similar future procurements is too remote to ensure that the issues will be brought into sharp focus. Further, deciding such issues in the abstract, without all the facts and a complete record before us, might prove misleading to other parties in the procurement field.

For your information, regarding Power Testing's concern about establishing a distinction between maintenance and construction services for purposes of assigning the proper size standards in future procurements, under Small Business Administration (SBA) regulations, the initial determination of the appropriate classification of a product or service being procured shall be made by the contracting officer with right of appeal to the SBA's Size Appeals Board. 13 C.F.R. §§ 121.3-8 and 121.3-6 (1979). The SBA's determination is conclusive and, therefore, our Office declines to consider such matters. Kappa Systems, Inc., B-183036, May 20, 1975, 75-1 CPD 305. Since both the Defense Acquisition Regulation (DAR) and the Federal Procurement Regulations (FPR) provide methods for appealing contracting officers' decisions on size standards to the SBA, we believe that no modification of those regulations, as suggested by Power Testing, is necessary. See DAR § 1-703(c) (1976 ed.) and FPR § 1-1.703-2(g) and (h) (1964 ed. amend. 192).

Accordingly, should Power Testing find fault with the Department of Transportation's actions in future procurements, Power Testing should protest

such actions in a timely manner to the agency or our Office in accordance with our Bid Protest Procedures. Should Power Tinting disagree with the size standards used in future procurements, appeals should be made to the SBA's Size Appeals Board in accord with the above-cited regulations.

Sincerely yours,

*Harry D. Van Cleave*  
for Milton J. Socolar  
General Counsel