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DECISION

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

Protest Against Action Taken by SBA

FILE: B-202751

DATE: April 23, 1981

MATTER OF: Quality Dry Cleaner & Industrial Laundry

DIGEST:

Determination by Small Business Administration (SBA) not to participate in specific procurements under section 8(a) of Small Business Act is within discretion of SBA and generally not subject to review by GAO.

Quality Dry Cleaner & Industrial Laundry protests action taken by the Small Business Administration (SBA) with respect to the procurement of laundry services by Lowry Air Force Base (Lowry) and Fitzsimons Army Medical Center (Fitzsimons).

During 1980, Quality provided laundry services at Lowry and Fitzsimons pursuant to subcontract awarded by SBA under the SBA's 8(a) program. SBA apparently commenced negotiations with the procuring activities for laundry service contracts for 1981 under the 8(a) program. By letter of April 3, 1981, however, SBA informed Quality that SBA "is returning the requirements for laundry service" for the base and medical center.

The procurements were the only 8(a) procurements in which Quality had been participating. Quality therefore contends that SBA has in effect terminated its participation in the 8(a) program without affording it a hearing as required by the Small Business Act. However, we find nothing before us subject to legal review.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III 1979), authorizes the SBA to enter into contracts with any Government agency with procurement powers and to arrange for the execution of contracts by letting subcontracts to socially and economically disadvantaged small businesses. The statute grants the SBA and the contracting agencies broad discretionary authority

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in this area. See Kings Point Manufacturing Company, Inc., 54 Comp. Gen. 913 (1975), 75-1 CPD 264. We recognize this authority regardless of whether the action being challenged relates to a decision not to set aside a procurement for a noncompetitive 8(a) award, Baltimore Electronics Associates, Inc., B-185042, February 17, 1976, 76-1 CPD 105, or to a decision to withdraw a procurement from the 8(a) program. Newton Private Security Guard and Patrol Service, Inc., B-186756, November 30, 1976, 76-2 CPD 457. Thus, we generally do not legally review such decisions under our bid protest function.

The Small Business Act does provide that a firm previously deemed eligible may be denied total participation in the 8(a) program only after being afforded a hearing on the record, 15 U.S.C. § 637 (a)(9), and SBA regulations provide for a hearing where a firm is deemed to have completed the 8(a) program or is proposed to be terminated from the program for cause. 13 C.F.R. § 124.1-1(d), (e) (1980). It is clear, however, that the hearing requirement applies only to the termination of a firm's eligibility to participate in the 8(a) program. It does not apply to a determination that an eligible 8(a) firm is not qualified to perform a particular contract or to a decision not to include a particular procurement in the program.

Although the protester contends that SBA's actions are tantamount to terminating it from the 8(a) program, the protester does not indicate that its eligibility for 8(a) awards has been removed. Rather, it appears that SBA has decided, for reasons within its broad discretion, not to retain two contracts in the 8(a) program that previously had been set aside under the program. The fact that the protester was the beneficiary of the prior set-asides does not vest it with any rights to have follow-on contracts awarded to it under the program. See Wallace and Wallace Fuel Oil Co., Inc., B-182625, April 1, 1975, 75-1 CPD 191.

Thus this matter involves actions which are within the discretion of SBA. The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel