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DECISION



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

[Protest of SBA] termination of Eligibility for 8(a) Subcontract

FILE: B-202697.2

DATE: April 29, 1981

MATTER OF: Wallace & Wallace Fuel Oil Co.

DIGEST: DLG66609

1. GAO does not review Small Business Administration determination of eligibility for award of 8(a) subcontracts unless there is showing of bad faith or fraud on part of Government officials.
2. Small Business Administration's (SBA) determination not to award subcontract under the 8(a) program to recipient of prior 8(a) subcontracts does not constitute improper termination of firm's eligibility for participation in 8(a) fuel supply program and need not be preceded by hearing required by Small Business Act and regulations prior to actual termination.

Wallace & Wallace Fuel Oil Co. (Wallace) protests the Small Business Administration's (SBA) decision not to award Wallace an 8(a) subcontract for a portion of the bulk quantities of diesel and other fuels reserved for SBA under solicitation No. DLA 600-810R-0061 issued by the Defense Fuel Supply Center (DFSC).

According to Wallace, SBA has questioned the firm's financial capabilities and has advised that the firm will be terminated from the 8(a) program. Wallace asserts that it is a minority-owned small business concern which has participated in fuel purchases under the 8(a) program for over ten years and that it is fully capable of performing the work in question. Wallace further contends that SBA's failure to award Wallace a subcontract for a portion of DFSC's present fuel requirements constitutes an improper

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termination of Wallace's participation in the 8(a) program in that the procedural requirements of notice, hearing and administrative review have not been met.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp III 1979), authorize SBA to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. Under this statute and its implementing regulations, whether Wallace is financially capable or otherwise eligible for assistance under the 8(a) program is basically a matter for determination by SBA and not this office. SBA has broad discretion in managing the 8(a) program and its judgmental decision regarding eligibility will not be questioned absent a showing of fraud or bad faith on the part of Government officials. Jazco Corporation, B-197550, February 13, 1980, 80-1 CPD 132. Further, we do not review SBA's compliance with its internal procedures including those relating to eligibility determinations, under our bid protest function. Jets Service, Inc., B-199721, March 11, 1981, 81-1 CPD ____.

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 award a particular subcontract to any one participant in the 8(a) program. Quality Dry Cleaner & Industrial Laundry, B-202751, April 23, 1981, 81-1 CPD ____.

Although the protester contends that SBA's actions are tantamount to terminating it from the 8(a) program, the protester does not allege 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 award Wallace a portion of the DFSC fuel requirements in question, but instead, we understand, to award the requirement to another 8(a) eligible firm. The fact that the protester was the beneficiary of the prior 8(a) award 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.

The protest is dismissed.

Harry R. Van Cleve

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Acting General Counsel