

DECISION



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

31526

FILE: B-218641

DATE: June 24, 1985

MATTER OF: Cassidy Cleaning, Inc.

DIGEST:

GAO will not review the eligibility of a firm for assistance under section 8(a) of the Small Business Act. Also, GAO will not review the award of an 8(a) subcontract absent a showing of possible fraud or bad faith on the part of government officials or that regulations have been violated. 4 C.F.R. § 21.3(f)(4) (1985). The Competition in Contracting Act does not mandate that competitive procedures be applied to contracts let pursuant to section 8(a).

Cassidy Cleaning, Inc. (Cassidy), protests the award of a contract to Eastern Services, Inc., by the Small Business Administration (SBA) under the authority of the "8(a)" program of the Small Business Act. See 15 U.S.C. § 637(a) (1982). The procurement is for the cleaning requirements of the National Aeronautics and Space Administration (NASA), Goddard Space Flight Center. Cassidy, an "8(a)" firm, contends that the contract was awarded without giving it an equal competitive opportunity in violation of the requirements of the Competition in Contracting Act (CICA), Pub. L. 98-369, 10 U.S.C.A. § 2301 et seq. (West Supp. 1985).

We dismiss the protest.

Under section 8(a) of the Small Business Act, the SBA is authorized 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. Advance, Inc., B-213002, Feb. 22, 1984, 84-1 C.P.D. ¶ 218. In the past, our decisions have recognized that section 8(a) authorizes a contracting approach which in general is not subject to the competitive and procedural requirements of the procurement regulations and the statutory provisions they implement. Arawak Consulting Corp., 59 Comp. Gen. 522 (1980), 80-1 C.P.D. ¶ 404; Advance, Inc., B-213002, supra.

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Cassidy argues that section 2723 of CICA amended 10 U.S.C. § 2304(b)(2) so as to require that competitive procedures, as defined by CICA, be used when an agency contracts through SBA with socially and economically disadvantaged small business concerns. In this regard, this section, as amended by CICA, reads:

"(2) In fulfilling the statutory requirements relating to small business concerns and socially and economically disadvantaged small business concerns, the head of an agency shall use competitive procedures but may restrict a solicitation to allow only such business concerns to compete."

However, subsection (c) of section 2723 states:

"The amendments made by this section do not supersede or affect the provisions of section 8(a) of the Small Business Act. (15 U.S.C. § 637(a))."

Moreover, the legislative history of CICA conflicts with Cassidy's interpretation of this section. The report on the conference between the House of Representatives and United States Senate on the bill that became CICA, addressing the language quoted above, states that "procurements conducted under section 8(a) of the Small Business Act are exempt from the procurement procedures mandated . . ." for non "8(a)" procurements. H.R. Rep. No. 98-861, 98th Cong. 2d Sess., 130 Cong. Rec. H6756 (Daily ed. June 22, 1984).

Any possible question in this regard was resolved when 10 U.S.C. § 2304(b)(2) was again amended by section 504(b)(1) of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. 98-577, 98 Stat. 3086 (1984). This section deleted the CICA language quoted above and substituted new language such that 10 U.S.C.A. § 2304(b)(2) (West Supp. 1985) currently reads:

"(2) An executive agency may provide for the procurement of property or services covered by this section using competitive


procedures, but excluding other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 639; 644)." ^{1/}

This amendment deleted the reference to "socially and economically disadvantaged firms" with regard to any competitive procedure requirements. Indeed, a specific purpose of this amendment was to insure that section 8(a) program awards "will not be impacted by" CICA. 130 Cong. Rec. H10841 (Daily ed. Oct. 2, 1984) (Statement of Rep. Addabbo). See also 130 Cong. Rep. H10840 (Daily ed. Oct. 2, 1984) (Statement of Rep. Mitchell).

In view of the foregoing, we will continue not to review the award of "8(a)" subcontracts absent a showing of possible fraud or bad faith on the part of government officials or that regulations may have been violated. 4 C.F.R. § 21.3(f)(4) (1985); Advance, Inc., B-213002, supra. Cassidy has not made such a showing.

Finally, Cassidy alleges that it has a "reasonable belief" that the awardee is not a "minority" contractor as required by section 8(a) of the act. However, whether a firm is eligible for assistance under section 8(a) of the act is basically a matter for determination by the SBA and is not subject to review by our Office. Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 C.P.D. ¶ 39; Graphic Industries Association, B-211940, Nov. 21, 1983, 83-2 C.P.D. ¶ 600.

The protest is dismissed.


Harry R. Van Cleve
General Counsel

^{1/} Section 9 of the Small Business Act is codified at 15 U.S.C. § 638 (1982), not 15 U.S.C. § 639.