



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John Sullivan
File: B-231115
Date: July 12, 1988

DIGEST

1. Protest of Small Business Administration's alleged failure to prepare an impact analysis for the Small Business Act's section 8(a) program is denied where the 8(a) contract is for services not previously procured from small business.
2. Section 8(a) subcontracting program is a noncompetitive procedure established by statute which grants contracting agencies broad discretion to determine the appropriateness of an 8(a) award, and which does not require publication of the proposed procurement action.

DECISION

John Sullivan protests the award of a contract to J.J.S. Services to provide the Army with cleaning services for family quarters being vacated at Fort Devens, Massachusetts. The contract was awarded under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982). Section 8(a) authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small businesses.

We deny the protest.

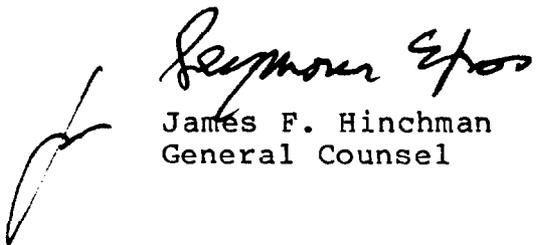
Sullivan alleges that the SBA failed to determine whether acceptance of the procurement for an 8(a) award would adversely impact other small businesses. Sullivan further contends that since he is an incumbent small business contractor who received two consecutive awards within the last 24 months, and the estimated dollar value of the award would be more than 25 percent of his most recent annual gross sales, under SBA regulations, adverse impact on his business should be presumed.

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The Small Business Act affords the SBA and the contracting agencies broad discretion in selecting procurements for the section 8(a) program. T.A.M., Inc., B-224193, Sept. 26, 1986, 86-2 CPD ¶ 361. Here, the SBA determined that it was not required to analyze the impact on Mr. Sullivan's business because the procurement was determined to be new. Nevertheless, SBA indicates that it made an impact determination and concluded that Sullivan was not adversely affected because he is not an incumbent contractor as he alleges. As the protester states in his comments on the agency report, he was providing cleaning services primarily to soldiers and their families in their individual capacity. Sullivan had received government purchase orders for cleaning dust and debris from recently renovated quarters, and occasionally for cleaning vacated quarters under extraordinary circumstances. However, the instant 8(a) set-aside results from the Army's decision to assume responsibility for clean-up of government owned family housing quarters, which had previously been required of the occupants at their expense, not the government's. Accordingly, the SBA concluded that this was a new procurement for services which previously were not primarily provided by the Army.

Sullivan further alleges that the SBA award to JJS without publication of the contract action, and the failure to solicit competitive bids, are indicative of the government's bad faith. To establish bad faith, however, the protester must present virtually irrefutable proof that the government officials had a specific, malicious intent to cause the protester harm. Inter-Con Security Systems, Inc., B-227008, July 24, 1987, 87-2 CPD ¶ 81. Based on the protester's allegations, we cannot conclude that the Army or SBA acted in bad faith. Under the Federal Acquisition Regulation § 5.202(a)(4) (FAC 84-28), section 8(a) contracts are exempted from publication requirements. Further, there is no requirement for competitive awards under the section 8(a) program, rather SBA and the contracting agencies are given broad discretion in deciding the appropriateness of contracting arrangements. IBI Security Service, Inc., B-228056, Sept. 2, 1987, 87-2 CPD ¶ 218.

The protest denied.



James F. Hinchman
General Counsel