



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Phoenix Company

File: B-232155

Date: August 18, 1988

DIGEST

1. The award of a noncompetitive contract under section 8(a) of the Small Business Act is a matter within the discretion of the contracting agency. Such an award will not be reviewed by the General Accounting Office absent a showing of possible fraud or bad faith on the part of contracting activities or that regulations have not been followed.
2. An allegation that several experienced minority-owned small businesses that do not participate in the section 8(a) program will be deprived of business as a result of an 8(a) award is not tantamount to a showing of possible fraud or bad faith.

DECISION

Phoenix Company protests the award of a noncompetitive contract by the Department of the Army, Ft. Ord, California, to the Small Business Administration (SBA) under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982). The contract is for cleaning services for residential units on the installation. Section 8(a) authorizes the SBA to contract with government agencies and to arrange for performance of such contracts by awarding subcontracts to socially and economically disadvantaged small businesses. These subcontracts need not be awarded competitively.

We dismiss the protest.

As its bases for protest, Phoenix claims that the award of the contract on a noncompetitive basis to L&E Service Company, SBA's proposed subcontractor, is inconsistent with

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the intent of the Small Business Act, as other firms that presently provide these services would lose their share of these contracts as a result, and that there is possible fraud or bad faith on the part of government officials or a violation of procurement regulations in this award.

We have been informally advised that this is the first contract for these services to be awarded by the government utilizing appropriated funds. Prior to this contract the individual service personnel moving from the quarters contracted with various cleaning firms from a rotating list provided by the government. These personnel paid for the services provided with their own funds, that is, no government funds were involved.

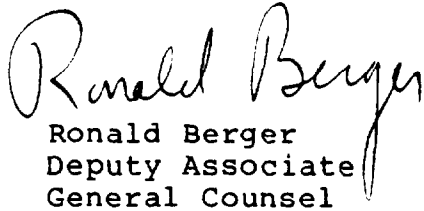
As a general matter, our Office does not review a contracting agency's decision to award or not award a contract under section 8(a) of the Small Business Act, unless there is a showing of possible fraud or bad faith on the part of government contracting officials or of a failure to comply with the regulations. Sam Gonzales, Inc.--Request for Reconsideration, B-225542.2, Mar. 18. 1987, 87-1 CPD ¶ 306. This so because such decisions are, by statute, within the discretion of the agencies to make. Electronic Systems Associates, Inc., B-228685, Aug. 17, 1987, 87-2 CPD ¶ 170. There has been no showing of possible fraud or bad faith here. The protester simply alleges that there are several small minority firms^{1/} that are experienced in quarters cleaning which will be deprived of business as a result of the award, while the proposed awardee has never performed quarters cleaning services, but instead has been awarded contracts for janitorial and food services. This does not in any way indicate bad faith. An agency has the right to select a procurement for the 8(a) program under the regulatory guidelines set forth in Federal Acquisition Regulation § 19.803, notwithstanding the fact that there are other, non-8(a) vendors, that previously provided these services on a private basis.

We also fail to see how what the agency did here is inconsistent with the intent of the Small Business Act, since the Act authorizes this type of discretionary determination. In addition, the protester has not shown or even alleged which particular regulations have been violated by the award. Finally, the protester's complaint that the

^{1/} The protester acknowledges that none of these firms participates in the 8(a) program and that L&E Services has been in the program for 2 years.

award is to be made without competition is without merit, because 8(a) awards need not be made competitively. See IBI Security Service, Inc., B-228056, Sept. 2, 1987, 87-2 CPD ¶ 218.

The protest is dismissed.


Ronald Berger
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General Counsel