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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Premier Cleaning Systems, Inc.

File: B-249179.3

Date: July 27, 1992

Kathy C. Weinberg, Esq., Duke & Riley, for the protester, Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East & Barnhill, for Main Building Maintenance, Inc., an interested party.

Herbert Kelley, Esq., and Captain Gerald P. Kohns, Department of the Army, for the agency.

Roger H. Ayer, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office (GAO) will not review a decision by the Small Business Administration (SBA) that a firm satisfies the eligibility requirements for a competitive award under section 8(a) of the Small Business Act; SBA, not GAO, has conclusive statutory authority to determine such matters for federal procurements under the 8(a) program.

DECISION

Premier Cleaning Systems, Inc., protests the award of a contract to Main Building Maintenance, Inc. under request for proposals (RFP) No. DAKF48-91-R-0111. The RFP was issued as a competitive small disadvantaged business set-aside under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) ((1988) and (Supp. I 1989)),¹ by the Department of the Army, for building maintenance (hospital housekeeping/custodial) services at Fort Hood, Texas. Premier contends that Main is ineligible for the award because Main does not meet section 8(a) eligibility

¹Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) § 19.805 and 13 C.F.R. § 124.311 (1992) provide for and govern competitively awarded contracts set aside for section 8(a) qualified concerns. Macro Serv. Sys., Inc., B-246103; B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200.

requirements since it is allegedly affiliated with a large firm, J&J Maintenance Co., and that the agency failed to refer Premier's complaint in the matter to SBA.

We dismiss the protest.

On June 15, 1992, SBA advised the agency that it had certified Main both as eligible to receive a section 8(a) award, and as qualified to perform the contract. On June 16, the Army awarded the contract to Main. On June 23, the Army debriefed Premier. On the same day, Premier filed a document styled "Notice of Protest of Size Status" with the agency requesting an SBA ruling "regarding the standing of Main in its association with J&J as a small business concern eligible for award of a contract under the referenced solicitation."

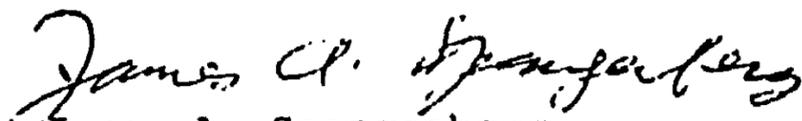
On July 1, the agency dismissed Premier's size status protest on the ground that FAR § 19.805-2(e) precludes challenges/protests of a section 8(a) firm's eligibility, on competitive 8(a) procurements. The Army did not forward the protest to SBA, but advised Premier of Premier's right to protest to that agency. Premier contends that the agency improperly denied Premier the opportunity to have its size status protest considered by SBA when it failed to forward its size status protest to SBA.

Where appropriate, section 8(a) contracts are to be awarded based on competition among eligible section 8(a) program participants (i.e., socially and economically disadvantaged small business concerns) if there is a reasonable expectation of receiving offers from two eligible firms and award can be made at a fair market price. FAR § 19.805(b); 13 C.F.R. § 124.311. Although we will review competitive section 8(a) procurements for compliance with certain applicable procurement regulations, see Morrison Constr. Servs., Inc., 70 Comp. Gen. 139 (1990), 90-2 CPD ¶ 499; Southwest Resource Dev., B-244147, Sept. 26, 1991, 91-2 CPD ¶ 295, our review generally does not extend to matters that are solely within the purview of SBA. Little Susitna, Inc., B-244228, July 1, 1991, 91-2 CPD ¶ 6. FAR § 19.805-2(e) states:

"The eligibility of an 8(a) firm for a competitive 8(a) award may not be challenged or protested by another 8(a) firm or any other party as part of a solicitation or proposed contract award. Any party with information concerning the eligibility of an 8(a) firm to continue participation in the 8(a) Program may submit such information to the SBA in accordance with 13 C.F.R. 124.111(c)."

That is, the SBA is the sole arbiter in determining section 8(a) program eligibility, and its determinations cannot be challenged by a program participant or any other party, 13 C.F.R. § 124.311(g); Little Susitna, Inc., supra. Under applicable regulations, the protester may raise questions concerning the eligibility of section 8(a) firms, including size, only with the SBA. While Premier argues that size protests concerning a proposed awardee on a competitive section 8(a) procurement can be filed with the Army under FAR § 19.302,² we think such size protests are clearly encompassed in FAR § 19.805-2(e) (quoted above), since small business size is a necessary prerequisite to section 8(a) eligibility, see 13 C.F.R. §§ 124.102, 124.311(h)(2), and SBA is both the agency that actually contracts with an eligible contractor and the agency with the exclusive authority to make size determinations as it concerns section 8(a) eligibility. Therefore, we will not consider Premier's protest pertaining to Main's size and 8(a) eligibility or the Army's action thereon.

The protest is dismissed.³


James A. Spangenberg
Assistant General Counsel

²FAR § 19.302 provides that any offeror or other interested party may protest the small business representation of an offeror in a specific offer to the contracting officer.

³Premier has filed another protest (B-249179.2) challenging the propriety of the agency's evaluation of proposals and cost-technical trade-off that will be the subject of a future decision.