



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Apex Cleaning Contractors

File: B-249268

Date: October 1, 1992

Jerold Epstein for the protester.
Ian A. Roberts for Reliable Cleaning & Maintenance Corp., an interested party.
Gerald P. Kohns, Esq., Department of the Army, for the agency.
Mona K. Mitnick, Esq., United States Small Business Administration, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Small Business Administration (SBA) determination that the protester, the incumbent small business contractor, would not be adversely impacted by the acceptance of a requirement for custodial services for award under the SBA's 8(a) program to a small disadvantaged business is not objectionable where the determination was made in accordance with SBA regulations and no fraud or bad faith has been alleged.

DECISION

Apex Cleaning Contractors protests the proposed award of a contract for custodial services at eight United States Army Reserve Centers in New York under request for proposals (RFP) No. DABT35-92-R-0022 to Reliable Cleaning and Maintenance Corp., a small disadvantaged business, under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988). 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 businesses.

We deny the protest.

In 1991, under a small business set-aside solicitation, the Army awarded contracts to five small business concerns to provide custodial services at 18 reserve centers for the period of October 1, 1991, through September 30, 1992. The

Army awarded a contract to the protester for two reserve centers, a contract to Admiral Cleaning Company for 10 reserve centers, and three contracts to three other small business concerns for six reserve centers. Approximately 3 weeks after Admiral began providing the required services at the 10 reserve centers, the Army terminated Admiral's contract for default. The Army then offered its requirement for custodial services at these 10 reserve centers to the SBA for award under the 8(a) program. The SBA accepted the Army's requirements and awarded an 8(a) contract to Reliable Cleaning.

In 1992, the Army offered its requirement for custodial services at the remaining 8 reserve centers (for a total of 18 reserve centers, including the 10 previously accepted by the SBA and the 2 for which the protester was the incumbent contractor) to the SBA for award under the 8(a) program for performance during the period of October 1, 1992, through September 30, 1993. The SBA notified the incumbent contractors at the eight reserve centers that it was considering accepting the Army's requirement for the 8(a) program. In order for the SBA to objectively determine what impact acceptance of the Army's requirement for the 8(a) program would have on the incumbent small business contractors, the SBA requested that each firm submit its most current financial statement. The protester submitted an independently prepared balance sheet and profit and loss statement.


The SBA subsequently accepted the Army's offering based on its finding that no other small businesses would be adversely impacted by the SBA's award of an 8(a) contract for the work. This included the protester, whose prior contract represented less than 12 percent of its most recent annual gross sales as reflected by its financial documents and its admission that its prior contract did "not represent 25 [percent] of [its] gross revenue." In making this findings, the SBA also concluded that there was nothing in the protester's financial documents which showed that the loss of this contract would cause the protester to experience severe financial hardship. The SBA further found no basis in the financial documents to conclude that the loss of its prior contract would require the protester to seek bankruptcy protection. The SBA also conducted an informal market survey which shows that other government contracting opportunities for custodial services exist in the New York area.

The protester challenges the SBA decision to accept the additional eight reserve centers, which includes the two for which the protester was the incumbent contractor, into the SBA's 8(a) program.

The Small Business Act affords the SBA and contracting agencies broad discretion in selecting procurements for the 8(a) program; we will not consider a protest challenging a decision to procure under the 8(a) program absent a showing of possible fraud or bad faith on the part of government officials or that specific laws or regulations have been violated. Microform Inc., B-244881.2, July 10, 1992, 92-2 CPD ¶ 13; Korean Maintenance Co., B-243957, Sept. 16, 1991, 91-2 CPD ¶ 246; San Antonio Gen. Maintenance, Inc., B-240114, Oct. 24, 1990, 90-2 CPD ¶ 326. Here, there is no evidence in the record to support the required showing.

SBA regulations provide that the SBA will not accept a requirement previously met by a small business into the 8(a) program if doing so would have an adverse impact on other small business programs or on an individual small business. 13 C.F.R. § 124.309(c) (1992). The regulations provide that the SBA will presume an adverse impact on small business concerns and not accept a procurement into the 8(a) program where (1) a small business, which has performed the requirement for at least 24 months, is currently performing the requirement or has finished performance within 30 days of the procuring agency's offer of the requirement for the 8(a) program; and (2) the estimated dollar value of the offered 8(a) award would be 25 percent or more of the incumbent's most recent annual gross sales. 13 C.F.R. § 124.309(c)(2). In this case, as reflected by the protester's financial documents and its own admission, the dollar value of the proposed award does not represent 25 percent of the protester's most recent annual gross sales. Therefore, we find the SBA properly determined that there was no presumption of adverse impact under 13 C.F.R. § 124.309(c)(2). Consequently, we conclude that the SBA's decision to accept this requirement under the 8(a) program did not violate any law or regulation.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel