

K. Riback



Comptroller General
of the United States

432107

Washington, D.C. 20548

Decision

Matter of: Grace Industries, Inc.

File: B-261020

Date: July 10, 1995

William M. Grace for the protester.
Col. Riggs L. Wilks, Jr., and Lt. Col. Ralph L. Littlefield,
for the Department of the Army.
David R. Kohler, Esq., and Susan Sundberg, Esq., for the
Small Business Administration.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Small Business Administration (SBA) determination to accept
for award under SBA's 8(a) program a requirement for
custodial services, which were previously contracted from
the protester, a small business, is unobjectionable where
SBA reasonably determined, in accordance with applicable
regulations, that acceptance of the requirements would not
have an "adverse impact" on the protester.

DECISION

Grace Industries, Inc., a small business, protests the
proposed award of a contract for custodial services under
request for proposals (RFP) No. DABT57-95-R-0006, to Hiltons
Environmental, Inc., a small disadvantaged business, under
section 8(a) of the Small Business Act, 15 U.S.C. § 637(a)
(1994). 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 April 1994, under a small business set-aside
solicitation, the Army awarded Grace contract No. DABT57-95-
R-0006 to provide custodial services at Fort Eustis, Fort
Story and three U.S. Army Reserve Centers, for a base period
of 5 months with four 1-year options. From the start, the

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Army noted deficiencies in Grace's contract performance, which were communicated to Grace through letters and meetings with the contracting activity. By letter to the Army contracting officer dated August 30, Grace advised that:

"As stated before, we feel that we are at irreconcilable differences and that these differences, if left to continue into an option period, would be both damaging to the Government and to Grace Industries, Inc.

"Therefore, we request that the Government not exercise its option and that a contractor more suitable to the Government's needs be acquired."

On November 14, the Army asked SBA to consider accepting into the 8(a) program the custodial services then provided by Grace.¹ The following day SBA accepted the Army's offering on behalf of Hiltons Environmental, Inc., based on its finding that no other small businesses would be adversely impacted by SBA's award of an 8(a) contract for the work.²

This protest followed in which Grace contends that the acceptance of the requirement into SBA's 8(a) program deprived it of an opportunity to compete for the contract and challenges SBA's decision to accept the requirement into the 8(a) program without an impact study on how this action would affect Grace. During the course of this protest, on April 22, Grace also submitted a request to SBA to reconsider this decision.

In response, on May 1, SBA confirmed its decision to accept the requirement into the 8(a) program because it determined that no other small business would be adversely impacted. This included the protester, whose prior contract represented less than 25 percent of its most recent annual gross sales, and who had been performing the contract for less than 24 months. In making its finding that loss of this contract would not cause Grace to experience severe financial hardship, the SBA also relied on Grace's own request to the Army that the option period not be exercised.

¹Pending procurement, the Army extended Grace's performance pursuant to Federal Acquisition Regulation § 52.217-9, Extension of Services.

²The SBA had initially viewed the custodial services as a new requirement which did not require an impact study because of Grace's letter indicating that it did not want to perform under the option period.

The Small Business Act affords SBA and contracting agencies broad discretion in selecting procurements for the 8(a) program. Accordingly, our Office will not consider a protest challenging the 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 may 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. Here, there is no evidence in the record to support the required showing.

SBA regulations provide that 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) (1995). The regulations provide that SBA will presume an adverse impact on small business where (1) a small business, which has performed the requirement for at least 24 months, is currently performing the requirement or had 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, it is undisputed that the protester has been performing the requirement for less than 24 months. In addition, SBA determined that the estimated dollar value of the offered 8(a) award was less than 25 percent of Grace's most recent annual gross sales. Grace does not assert that SBA failed to consider other relevant factors in its determination that acceptance of this requirement would not adversely impact either another small business program or an individual small business. Therefore, we conclude that SBA's decision to accept this requirement under the 8(a) program did not violate the applicable regulation.

Grace also argues that SBA's determination that acceptance of this requirement would not have an adverse impact on Grace was the result of bias. Government officials are presumed to act in good faith; we will not attribute unfair prejudicial motives to procurement officials on the basis of inference or supposition. Northwestern Travel Agency, Inc., B-244592, Oct. 23, 1991, 91-2 CPD ¶ 363. The record here shows that SBA did not initially conduct an adverse impact study because it concluded, based on Grace's request that the Army not extend its contract, that the offering would constitute a new requirement. As noted above, SBA subsequently decided, consistent with the applicable regulation, that there was no adverse impact on Grace. The

record thus provides no evidence to support the protester's accusations of bad faith.

The protest is denied.

Quayne S. Melady
for Robert P. Murphy
General Counsel