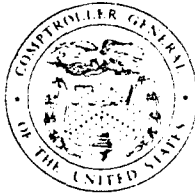


DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60432

FILE: B-184958

DATE: January 27, 1976

MATTER OF: U.S. Eagle, Inc.

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DIGEST:

Protest of proposed subcontract award under § 8(a) of Small Business Act is denied where review of the record indicates that award determination is reasonable exercise of administrative discretion.

U.S. Eagle, Inc. (Eagle) protests the award of a subcontract by the Small Business Administration (SBA) to B&W Service Industries, Inc. (B&W) under contract No. F04684-76-90057 for custodial services at Vandenberg, Air Force Base, California. The SBA awarded the subcontract in the amount of \$397,681 to B&W on October 23, 1975, pursuant to section 8(a) of the Small Business Act, 15 U.S.C. 637 (a) (1970).

The substance of Eagle's protest is that B&W's volume of business which includes custodial contracts at other Air Force bases constitutes a prima facie case that B&W is a self-sustaining entity and should not be the 8(a) subcontractor at Vandenberg AFB. Moreover, Eagle argues that the custodial services contract should be open to all who wish to compete for it and not set aside as an 8(a) subcontract.

With regard to the set-aside, section 8(a) empowers the SBA to enter into contracts with any Governmental agency having procurement powers, and the contracting officer of such agency is authorized "in his discretion" to let the contract for SBA "upon such terms and conditions" as may be agreed upon between SBA and the procuring agency. 53 Comp. Gen. 143 (1973). Under regulations issued pursuant to section 8(a), the SBA has determined that firms owned or controlled by economically or socially disadvantaged persons should be the beneficiaries of the 8(a) program (13 C.F.R. 124.8-1(b)). We have recognized that the determination to initiate a set-aside under section 8(a) and to dispense with competition is a matter within the sound discretion of the SBA and the contracting agency. Alpine Aircraft Charters, Inc., B-179669, March 13, 1974, 74-1 CPD 135; Eastern Tunneling Corporation, B-183613, October 9, 1975, 75-2 CPD 218. From our examination of the record, it appears that the decision to set aside the procurement was a reasonable exercise of administrative discretion.


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SBA's award of the 8(a) subcontract to B&W is, in effect, a finding that B&W has not attained the objective set out in B&W's business plan. The thrust of Eagle's argument is that B&W is, or should be, self-sustaining in light of its volume of business, which Eagle indicates exceeds \$1 million per year. However, the record indicates that B&W's gross sales for fiscal year 1975 were \$843,969, most of which was derived from 8(a) awards. In any event, as we noted in Kings Point Manufacturing Company, Inc., B-181221, April 29, 1974, 75-1 CPD 264,

"* * * continued participation of a firm in the section 8(a) program should be terminated when the firm's continued participation will not further the objectives of the program or when the firm has substantially achieved the objectives of its business plan. In both situations, the decision to terminate is a judgmental matter for SBA."

Here, as in Kings Point, supra, the SBA has determined that B&W should not be terminated as a recipient of section 8(a) assistance. Our review of the record does not suggest that SBA has unreasonably decided that B&W is not yet self-sufficient or has not achieved its business plan objectives.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States