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DECISION

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

FILE: B-202751 DATE: August 12, 1981

MATTER OF: Quality Dry Cleaner & Industrial Laundry--Reconsideration

DIGEST:

Small Business Administration's (SBA) decision to withdraw two procurements from section 8(a) program because proceedings to terminate prospective subcontractor's participation in program for cause were imminent was neither improper de facto termination without hearing nor abuse of SBA discretion to select, with contracting agencies, procurements for 8(a) awards.

Quality Dry Cleaner & Industrial Laundry requests that we reconsider our decision in Quality Dry Cleaner & Industrial Laundry, B-202751, April 23, 1981, 81-1 CPD 316, in which we dismissed the firm's protest that the Small Business Administration (SBA) improperly terminated Quality's participation in the SBA's program under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III 1979), without affording the firm a hearing. Section 8(a) authorizes the SBA to enter into contracts with Government agencies with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns.

We affirm our decision.

The record showed that Quality provided laundry services at Lowry Air Force Base and Fitzsimons Army Medical Center during 1980 pursuant to subcontracts awarded under the 8(a) program. The SBA apparently began negotiating 1981 laundry service contracts with those activities for subcontracting with Quality under section 8(a), but then advised Quality that the contracts would not be included in the 8(a) program. Since the procurements were the only

8(a) ones in which Quality had been participating, the firm contended that the SBA in effect improperly terminated Quality's participation in the 8(a) program without the hearing required by the Small Business Act. In this respect, the statute provides that a firm previously deemed to be eligible for 8(a) contracts may not be denied total participation in the program unless it is first afforded a hearing. 15 U.S.C. § 637(a)(9). See also SBA's regulations at 13 C.F.R. § 124.1-1(e) (1980).

We stated that the hearing requirement applies to the termination of a firm's eligibility to participate in the 8(a) program, not to a determination by the SBA that an 8(a) firm is not qualified to perform a particular contract or to a decision not to include a particular procurement in the 8(a) program. We dismissed the protest because Quality did not indicate that its eligibility for 8(a) awards had been removed. We stated:

> "Rather, it appears that SBA has decided, for reasons within its broad discretion, not to retain two contracts in the 8(a) program that previously had been set aside under the program. The fact that the protester was the beneficiary of the prior set-asides does not vest it with any rights to have follow-on contracts awarded to it under the program."

With its request for reconsideration, Quality has furnished a copy of a letter to SBA's Acting Regional Administrator from the Acting Inspector General (IG) of the SBA recommending "in the strongest possible manner" that, based on a partial review of the assistance given Quality under the 8(a) program, "additional 8(a) contract support not be afforded to this company." The letter states that while the Acting IG is not empowered to terminate a firm's 8(a) participation, in his opinion any SBA assistance to Quality "would be unconscionable" and would reflect abuse and mismanagement. The letter indicates that the case will be presented to the appropriate SBA officials, including the Administrator.

Quality points out that the procurements in issue were withdrawn from the 8(a) program for 1981 immediately after the SBA Acting Regional Administrator received the IG advice.

Quality contends that the letter establishes that the withdrawal in fact was a termination of Quality's participation in the 8(a) program at the unauthorized direction of the Acting IG, and thus that Quality was entitled to a hearing.

We do not agree with Quality's characterization of the SBA's actions here. We recognize that a de facto termination could be perceived if a firm that has been receiving 8(a) subcontracts suddenly and consistently is denied the chance to continue doing so because the procurements are deleted from the program, thereby effectively ending 8(a) assistance to the firm. In this regard, we have noted that repeated nonresponsibility determinations can result in de facto debarments. See 43 Comp. Gen. 140 (1963); Howard Electric Company, 58 Comp. Gen. 303 (1979), 79-1 CPD 137.

We remain of the view expressed in our April 23 decision, however, that in this case Quality's participation in the 8(a) program cannot be said to have been terminated. It is clear from the Acting IG's letter that he was advising, in very strong terms, that he was going to propose that Quality's 8(a) participation be terminated as provided for in the Small Business Act and the SBA's regulations. We see nothing improper in the Acting Regional Administrator's decision not to continue the two 8(a) procurements based on that advice. Cf. Greenwood's Transfer and Storage Co., Inc. B-186438, August 17, 1976, 76-2 CPD 167 (where we did not object to a finding of nonresponsibility that was based on a pending debarment action concerning that firm). This action does not, in our view, constitute actual termination from the program. In fact, we have been informed by the SBA that notwithstanding the Acting IG's letter, the SBA has not initiated termination action against Quality. Instead, we are informed, the parties are attempting to find 8(a) subcontracting opportunities for Quality that would be compatible with the firm's financial resources.

Our prior decision is affirmed.

Milton J. Socolar

Acting Comptroller General
of the United States