The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Support Management Services, Inc.--Request for
Reconsideration

File: B-229583.2

Date: June 9, 1988

DIGEST

1. Regulations of the Small Business Administration (SBA)
stating that the SBA will not accept a proposed procurement
into the section 8(a) program of the Small Business Act if
the SBA determines that there would be an adverse impact on
an individual small business do not necessarily require the
SBA to perform a formal impact study whenever it desires to
include a proposed procurement in the 8(a) program.

2. General Accounting Office will not review the
application by the Small Business Administration of its
internal procedures governing when an impact determination
is required prior to the award of a contract under section
8(a) of the Small Business Act in the absence of a showing
of possible fraud or bad faith.

DECISION

Support Management Services, Inc. (SMS), requests
reconsideration of our decision in Support Management
Services, Inc., B-229583, Mar. 17, 1988, 88-1 CPD ¶ 277, in
which we denied the firm's protest of the decision by the
Department of the Navy and the Small Business Administration
(SBA) to contract for logistics management support services
under section 8(a) of the Small Business Act, 15 U.S.C.
§ 637(a) (1982). We deny the request.

In its initial protest, SMS contested the SBA's decision not
to study the impact that setting aside the entire
requirement under the 8(a) program would have on that firm,
the incumbent small business contractor for part of the
support services required. The SBA did not perform an
adverse impact study because the Navy had determined that
the procurement involved "new work" and the policy of the
SBA, which accepted that determination, is not to perform an
impact study in such a situation. We noted that while SMS

previously performed some of the work that would be required under the proposed contract, the services SMS provided were limited in scope and, in terms of cost, represented only a fraction ($273,900) of the total estimated annual cost of the entire requirement ($1,661,898). We had no reason to question the determination that there had been a material expansion of the prior requirement in terms of the scope and nature of the services and that the proposed contract therefore represented new work. We concluded by noting that there was no showing of fraud or bad faith on the part of Navy or SBA officials warranting a review of the SBA's determination that an impact study was not required.

In its reconsideration request, SMS contends that we improperly denied its protest for failure to show fraud or bad faith on the part of the SBA. SMS points out that it has never challenged the SBA's good faith, but did allege that the SBA failed to follow regulations, specifically 13 C.F.R. § 124.301(b)(8)(iv) (1987), which provides that the SBA will not accept a proposed procurement into the 8(a) program if it determines that there would be an adverse impact on an individual small business. SMS argued in its initial protest that this regulation required the SBA to perform an impact study. The firm contends that a showing of fraud or bad faith thus was not required. SMS also continues to disagree with the determination that the services being procured are different, qualitatively and quantitatively, from those SMS has been performing.

We recognize that SMS based its initial protest on its belief that the SBA did not follow its own regulations. Contrary to the protester's apparent reading of the cited regulation, however, we find no requirement there that the SBA perform an impact study whenever it is considering the inclusion of a proposed procurement in the 8(a) program. While the regulation provides that the SBA "will consider relevant factors" in determining whether an adverse impact will occur, 13 C.F.R. § 124.301(b)(8)(iv)(A), and provides for a presumption of adverse impact if specified conditions exist,1/ the extent of any impact study that may be performed in a particular case necessarily is a matter within the discretion of the SBA official responsible for


1/ The SBA will presume adverse impact to exist when a small business concern has been the recipient of two or more consecutive awards of the item or service within the last 24 months, and the estimated dollar value of the award would be 25 percent or more of its most recent annual gross sales. 13 C.F.R. § 124.301(b)(8)(iv)(B).

making the impact determination, as guided by the SBA's internal Standard Operating Procedures (SOP). There is no merit, therefore, to the protester's position that SBA violated regulations by not performing an impact study in this case.

Paragraph 46 of the SBA's SOP 80-05 provides that impact determinations are not required when there is no incumbent small business. As explained by the SBA, the reason is that the adverse impact concept is designed to protect small business concerns that currently are performing government contracts outside the 8(a) program. When there is no small business incumbent--for example, when the proposed 8(a) contract is for new work not substantially similar to a contract previously awarded to a small business--the concept of adverse impact does not apply. We find nothing in the SBA's SOP 80-05 inconsistent with the provisions of SBA's regulations.

Whether the SBA has correctly determined in a particular case that a proposed procurement is for new work, and that an impact study therefore is not required, is a matter we will consider only when there is a showing of possible fraud or bad faith. Integrity Management International, Inc., B-230795.2, Apr. 25, 1988, 88-1 CPD ¶ 400. Thus, the fact that SMS continues to disagree with the position taken by the Navy and the SBA concerning the differences between the proposed 8(a) contract and the work previously performed by SMS provides no basis for review by this Office since SMS has not alleged fraud or bad faith.

The request for reconsideration is denied.
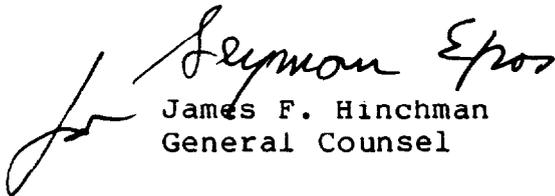
James F. Hinchman
General Counsel

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