



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: M&H Building Services, Inc.

File: B-232624.2

Date: November 29, 1988

DIGEST

1. Protest challenging decision to continue a procurement under section 8(a) of the Small Business Act is without merit absent a showing of fraud or bad faith on the part of government officials, or that specific regulations have been violated.

2. There is no legal requirement that a procurement be removed from the section 8(a) program in order to allow the incumbent contractor, a former 8(a) concern, to compete to continue performing the requirement.

DECISION

M&H Building Services, Inc., protests the award of a contract to Wilson 5 Service Company, Inc. or any other firm, under solicitation No. GS-01C-50161, issued by the General Services Administration (GSA) for federal building custodial services in New Hampshire. The solicitation was issued under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982 and Supp. IV 1986). M&H, which is no longer eligible for the 8(a) program, protests that the custodial services contract should be removed from the 8(a) program and resolicited as a competitive procurement.

We deny the protest.

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 small businesses. The record shows that M&H provided the custodial services as an 8(a) firm beginning in 1982, but was graduated on schedule from the 8(a) program in March 1986. M&H continued performing the 8(a) contract, however, until September 30, 1988. At that point, after consulting

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with SBA and determining it was appropriate to continue the requirement in the 8(a) program, GSA awarded a new contract (effective October 1) to Wilson, which had been proposed by SBA as an 8(a)-eligible firm.

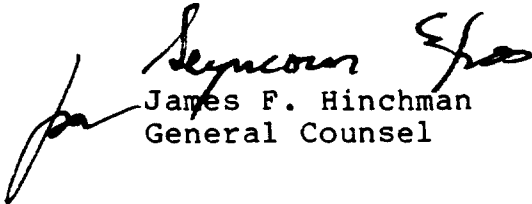
M&H concedes that it is no longer eligible to participate in the 8(a) program, but protests that its work under the prior contract constituted such a significant portion of its total business (about 38 percent) that it should be permitted to participate in negotiations with GSA for continued performance of the services. In effect, M&H asserts that the hardship imposed on the firm by the loss of the contract requires removal of the procurement from the 8(a) program.

M&H's position is without merit. The Small Business Act affords the SBA and the contracting agencies broad discretion in selecting procurements for the 8(a) program, Integrity Management International, Inc., B-230795.2, Apr. 25, 1988, 88-1 CPD ¶ 400, and a protester will not prevail in a challenge of a decision to procure under the 8(a) program absent a showing of fraud or bad faith on the part of government officials, or that specific regulations have been violated. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(4) (1988). M&H has not made such a showing here, and we thus find no basis for disturbing the SBA's and GSA's decision to retain this requirement in the 8(a) program.

The fact that M&H's ineligibility for the contract may have a significant effect on the firm is not a basis for sustaining the protest. There is no legal requirement that a procurement be removed from the 8(a) program to allow its possible award to the former 8(a) concern that previously performed it. In fact, the 8(a) regulations contemplate that during the period of a concern's participation in the program, section 8(a) contract support will be the minimum necessary and will progressively decrease, and that the 8(a) concern will be able to achieve competitive viability by the time of its graduation from the program. See 13 C.F.R. § 124.110(g) (1988). SBA regulations do provide for a prior review of acceptance of a new procurement into the 8(a) program to determine any adverse impact the acceptance

might have on small businesses not in the 8(a) program,
13 C.F.R. § 124.301(b)(8), but no similar regulation applies
to procurements already included in the 8(a) program.

The protest is denied.


James F. Hinchman
General Counsel