



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lecher Construction Company--Request for
Reconsideration

File: B-237964.2

Date: January 29, 1990

DIGEST

General Accounting Office will not review an agency's actions under the Section 8(a) program absent a showing that agency officials have violated regulations or engaged in fraud or bad faith.

DECISION

Lecher Construction Company requests reconsideration of our dismissal of its protest concerning solicitation No. DACWOF-89-C-0014, issued by the Corps of Engineers.

We deny the request for reconsideration.

Initially, Lecher was certified by the Small Business Administration (SBA) to participate in the Section 8(a) program for small disadvantaged business concerns. However, when Lecher later transferred its operations from Nebraska to California, the SBA refused to allow the company to transfer its Section 8(a) eligibility. By letter received in our Office on December 5, 1989, Lecher protested this eligibility determination, vaguely alleging that "government officials" had shown bad faith.^{1/} Because Lecher did not support its allegation with any substantiating facts, we dismissed its protest. See 4 C.F.R. 21.3(m) (1989).

In its request for reconsideration, Lecher contends that its initial allegation was specific enough to detail the "gist" of its complaint and that our Office has jurisdiction over

^{1/} Although the protester did not elaborate, it appears that as a result of the SBA determination, Lecher is ineligible for award of the solicitation cited in the initial protest letter.

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its Section 8(a) eligibility protest because agency bad faith has been alleged. We disagree.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), authorizes the 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 business concerns. Because of the broad discretion afforded the SBA and the contracting agencies under the applicable statute and regulations, our review of actions under the Section 8(a) program generally is limited to determining whether agency officials have violated regulations or engaged in fraud or bad faith. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(4); Graphic Indus. Assoc., B-211940, Nov. 21, 1983, 83-2 CPD ¶ 600. To show bad faith, the protester must present undeniable proof that the procuring agency had a malicious and specific intent to injure the protester. Ernie Green Indus., Inc., B-224347, Aug. 11, 1986, 86-2 CPD ¶ 178.

In its initial protest, Lecher only presented a general, bare assertion of bad faith; not even the name of the contracting agency was mentioned. Similarly, Lecher's request for reconsideration in no way substantiates its allegation; it merely chronicles the events leading to the eligibility determination. While Lecher disagrees with the SBA's decision, there is no indication that applicable regulations were violated or that SBA acted in bad faith, and we will not attribute unfair or prejudicial motives to the contracting agency on the basis of a protester's inference or supposition. System-Analytics Group, B-233051, Jan. 23, 1989, 89-1 CPD ¶ 57.

The request for reconsideration is denied.


James F. Hinchman
General Counsel