



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Speedy Food Service, Inc.

File: B-260298

Date: February 24, 1995

DECISION

Speedy Food Service, Inc. protests the Department of the Air Force's negative responsibility determination and referral of that determination to the Small Business Administration under solicitation No. F41652-94-R-0057, a competitive section 8(a) program procurement.

We dismiss the protest.

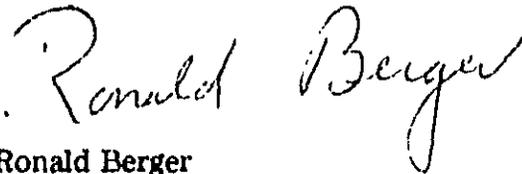
Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. V 1993), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. Because of the broad discretion afforded the SBA and agency contracting officials under the applicable statute and regulations, our Office generally does not review an agency's actions in connection with procurements conducted under the section 8(a) program. 4 C.F.R. § 21.3(m)(4) (1994). We will review such actions, however, where there is some showing that government officials may have violated regulations or engaged in actions that amount to fraud or bad faith. *Id.*; Appletown Food Serv. & Mgmt. Ltd.-Recon., B-244519.2; B-244524.2, Nov. 7, 1991, 91-2 CPD ¶ 433.

The protester alleges that the contracting officer improperly referred the questions of Speedy's responsibility to the SBA and that the SBA "abused its discretion" by first including Speedy on the list of 8(a) firms provided to the agency and then determining that the protester was not competent to perform the contract.

Speedy does not present a valid basis for protest. As indicated, under section 8(a) contracting officials have wide discretion in determining whether to award a contract under that program. Concern with the ability of a prospective awardee to perform the contract is a matter appropriate for the contracting officials to take into account. *See, e.g., Joaquin Mfg. Corp.*, B-255298, Feb. 23, 1994, 94-1 CPD ¶ 140; Appletown Food Serv. & Mgmt. Ltd.-Recon., *supra*. In this regard, as the protester itself recognizes, Federal Acquisition Regulation (FAR) § 19.809 permits the contracting officer to refer the question of the potential awardee's ability to perform to the SBA whenever the contracting officer has "substantial doubt" about

the matter. Ultimately, of course, it is up to the SBA to determine the question. FAR § 19.809; 13 C.F.R. § 124.313 (1994); Aviation Sys. & Mfg., Inc., B-250625.3, Feb. 18, 1993, 93-1 CPD ¶ 155. The actions taken here by the contracting officer and the SBA therefore are consistent with applicable regulations. Moreover, since there is no showing of possible bad faith in connection with the SBA's decision, the allegation regarding abuse of discretion is not for our consideration. See Maintenance, Inc., B-199854, Aug. 27, 1980, 80-2 CPD ¶ 155.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned above the typed name and title.

Ronald Berger
Associate General Counsel