

DOCUMENT RESUME

03311 - RA23534741

[Incumbent Contractor Terminated from Eligibility under Small Business Act]. B-189429. August 19, 1977. 2 pp.

Decision re: Tidewater Protective Services Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: National Aeronautics and Space Administration: Langley Research Center, Hampton, VA.
Authority: Small Business Act (15 U.S.C. 637(a)(1)). 13 C.F.R. 124.8-1. 38 Fed. Reg. 13729. D-184430 (1976). B-187919 (1977). B-186056 (1976). 54 Comp. Gen. 913. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

The incumbent contractor protested a contract award to another company after being advised that it no longer met eligibility requirements of the Small Business Act. The protester contended that not being advised of the possibility of its ineligibility and consideration of another company was a discriminatory action by the Small Business Administration (SBA). There is no requirement for such advice, and a firm's eligibility is a matter for determination by SBA, not GAO. (SW)

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DECISION



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

FILE: B-189429

DATE: August 19, 1977

MATTER OF: Tidewater Protective Services, Inc.

DIGEST:

Protest against award of 8(a) subcontract to another company by former incumbent contractor whose participation in 8(a) program was terminated by SBA will not be considered since eligibility for participation in 8(a) program is for determination by SBA and not this Office.

Tidewater Protective Services, Inc. (Tidewater), has protested the award to another company of a contract for the provision of guard services at the Langley Research Center, Hampton, Virginia, under request for proposals (RFP) 1-103-4350.0152 issued by the National Aeronautics and Space Administration (NASA).

NASA issued the RFP in question to the Small Business Administration (SBA) under the section 8(a) subcontracting procedures of the Small Business Act (15 U.S.C. § 637(a)(1) (1970)) and implementing regulations. The RFP advised that the Langley Research Center wished to obtain a proposal from Tidewater, the incumbent contractor. Tidewater states that it expended considerable effort to comply with the terms of the RFP. However, by letter dated June 3, 1977, from the SBA, Tidewater was advised that it was terminated from the 8(a) program. The SBA subcontract for guard services subsequently was awarded to another company. The SBA's letter of June 3 also advised Tidewater of its right to appeal the termination of eligibility. We have been advised, however, that in a meeting with SBA officials in July 1977, Tidewater did not present sufficient evidence of compliance with 8(a) program requirements for the SBA to withdraw the termination.

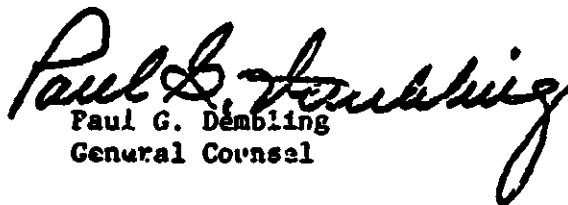
Tidewater contends that the SBA's action was discriminatory because Tidewater was not advised either of the possibility of termination of its eligibility for the 8(a) subcontracting program or that another company was being considered for this procurement. We note, however, that the SBA's letter to Tidewater, referenced above, provides evidence of continuing advice to Tidewater extending back at least to January 26, 1977, regarding Tidewater's problems with establishing minority ownership and complying with other requirements for participation in the 8(a) program.

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The requirements for eligibility for participation in the 8(a) program are set forth in title 13, Code of Federal Regulations, § 124.8-1 (1977). These regulations were published in the Federal Register on May 25, 1973. 38 Fed. Reg. 13729 (1973). Under applicable case law, Tidewater was on constructive notice of the content of these regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Enterprise Roofing Service, B-184430, January 2, 1976, 76-1 CPD 5. Tidewater therefore should have known that its continued eligibility for participation in the 8(a) program was in question. In these circumstances, it does not appear unreasonable for the SBA to consider an alternate prospective contractor and we are unaware of any requirement that the incumbent be advised of such action.

Furthermore, we have held that the question of whether a firm is eligible for and requires 8(a) assistance is a matter of judgment for determination by the SBA and not this Office. Jets Services, Inc., B-187919, January 12, 1977, 77-1 CPD 25; id., B-186066, May 4, 1976, 76-1 CPD 300; Kings Point Manufacturing Company, Inc., 54 Comp. Gen. 913 (1975), 75-1 CPD 264.

Accordingly, we will not consider the protest on the merits.


Paul G. Dembling
General Counsel