



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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Cohen

OFFICE OF GENERAL COUNSEL

B-203431

June 18, 1981

Benjamin N. Thompson, Esq.  
105 East Divine Street  
P.O. Box 151  
Dunn, North Carolina 28334

Dear Mr. Thompson:

We refer to your letter of May 22, 1981, on behalf of M&M Services, Inc. concerning the procurement of mess attendant services contracts at Fort Wainwright and Fort Greely in Alaska under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III 1979). You contend that the procurement will cause undue hardship to M&M Services, the incumbent contractor, because it is not qualified for the section 8(a) program, which you suggest is a violation of SBA's standard operating procedure. You further state that M&M Services has filed suit in the United States District Court for Alaska arguing that the services should be procured competitively. You request that we investigate the matter and stay any contract awards until the court hears your motion for summary judgment in the case.

To the extent that you are requesting that we review the merits of the matter under our Bid Protest Procedures, 4 C.F.R. part 20 (1980), it is our policy not to do so where the material issues involved are before a court of competent jurisdiction unless the court requests, expects, or otherwise expresses an interest in our decision. 4 C.F.R. § 20.10.

In any case, section 8(a) of the Small Business Act authorizes the Small Business Administration to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The contracting officer is authorized "in his discretion" to let contracts

*[Procurement of Services Under Section 8(a) of Small Business Act]*

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to the Small Business Administration upon terms and conditions to which the two agencies agree. Because of this broad discretion, we do not review under our bid protest function agency determinations to procure services under section 8(a), or the judgmental decisions that may be involved, unless there is a showing of bad faith or fraud on the part of Government officials. BKK Company, B-202498, March 30, 1981, 81-1 CPD 240; AMF Wyatt, Inc., B-202358, March 17, 1981, 81-1 CPD 205. Moreover, as a general matter our Office has no authority to require the withholding of an award. See Metcor Incorporated, B-185956, June 24, 1976, 76-1 CPD 406.

Nonetheless, in view of the nature of your allegation, we are referring the matter to our audit staff for its possible consideration with respect to our Office's ongoing review of section 8(a) procurements.

Sincerely yours,

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel