



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Grace Industries, Inc.

File: B-274378

Date: November 8, 1996

Herbert V. Kelly, Esq., Jones, Blechman, Woltz & Kelly, for the protester.
Christopher M. Bellomy, Esq., Department of the Navy, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that Small Business Administration (SBA) improperly failed to perform adverse impact evaluation before accepting janitorial services requirement into section 8(a) program is denied where record supports SBA determination that requirement was "new," and that adverse impact evaluation therefore was not required, because of significant increase in square footage under the requirement.

DECISION

Grace Industries, Inc. protests the decision by the Department of the Navy and the Small Business Administration (SBA) to include solicitation No. N62477-96-D-1044, for janitorial services at Quantico Marine Corps Base, in the SBA's section 8(a) set-aside program.¹

We deny the protest.

Grace was awarded a contract for janitorial services at Quantico in 1993; following a series of contract modifications, this contract ultimately covered a total of 203,868 square feet. In 1996, the agency decided to consolidate this requirement with additional requirements and to offer it to the SBA for inclusion in the section 8(a) program; the consolidated requirement covers 368,660 square feet. The SBA accepted the requirement for the section 8(a) program without performing an

¹Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), authorizes the SBA to contract with government agencies and arrange for performance of those contracts by awarding subcontracts to small socially and economically disadvantaged businesses.

adverse impact evaluation pursuant to 13 C.F.R. § 124.309 (1996)² based on its determination that, because the offered requirement covered an area more than 50 percent larger than the area under Grace's contract, it was a "new" requirement; new requirements are exempt from the adverse impact evaluation requirement.

Grace maintains that the requirement should not be considered new since it covers the same kinds of services provided under its contract. While the area covered is greater, Grace notes, the agency previously substantially increased the area under its originally awarded contract, indicating, Grace argues, that the agency previously did not consider increases in area to be material. Grace concludes that the increase in area should not be deemed to make this a new requirement within the meaning of the regulation, and that an adverse impact evaluation is required.

Because the Small Business Act affords the SBA and contracting agencies broad discretion in selecting procurements for the section 8(a) program, our Office reviews challenges to decisions to procure requirements under section 8(a) only to ensure that agency officials have not acted in bad faith, and that applicable laws or regulations have been followed. American Mutual Protective Bureau, 73 Comp. Gen. 196 (1994), 94-1 CPD ¶ 371. Grace does not contend that the Navy and SBA have acted in bad faith, and we find no violation of law or regulation.

The applicable regulation, 13 C.F.R. § 124.309(c), provides in relevant part:

"The expansion or alteration of an existing requirement shall be considered a new requirement where the requirement is materially expanded or modified so that the ensuing requirement is not substantially similar to the prior requirement due to the magnitude of the expansion or alteration."

The SBA's determination that the requirement is new was based on the reference in the regulation to a material "expansion," and the fact that the area covered by the requirement is more than 50 percent greater than the area under Grace's contract. There is no basis for objecting to the SBA's interpretation of the regulation language. The former requirement (the area under Grace's contract) clearly has been expanded, and the magnitude of the expansion--more than 50 percent--on its

²The SBA performs adverse impact evaluations to determine whether acceptance of a requirement into the section 8(a) program will have an adverse impact on other small business programs, or on an individual small business whether or not that small business is in the section 8(a) program; the adverse impact evaluation procedure is designed to protect other small businesses performing contracts outside the section 8(a) program. 13 C.F.R. § 124.309 (c).

face seems material. In this latter regard, although the SBA's regulation does not define materiality, we think the possibility that the expanded requirement could call for a significantly greater, different, and more costly effort to perform are considerations that support viewing such a large increase in area as material. See Coopers Constr., Inc., B-260364; B-260364.2, May 30, 1995, 95-1 CPD ¶ 268; Federal Acquisition Regulation § 14.405 (defect or variation viewed as material where it has more than a negligible effect on price, quantity, quality or delivery). The fact that the Navy previously opted to increase the area under Grace's contract is irrelevant; the regulation does not preclude the SBA from subsequently determining that an expansion of a requirement is material, and that it renders a requirement new such that an adverse impact evaluation is not required.

The protest is denied

Comptroller General
of the United States