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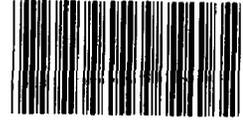


COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

March 23, 1981

B-202228

The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives



114876

Contract
Dear Mr. Chairman:

Subject: Reservation and Award of Section 8(a) Small Business Act Contracts to Arcata Associates (AFMD-81-33)

As requested in your letter of October 2, 1980 (encl. I) and in subsequent discussions with your office, we have reviewed the reservation and award of Section 8(a) Small Business Act contracts to Arcata Associates, Inc. (Arcata) to determine

--whether the allegations made by the BDM Services Company (BDM) to the Small Business Administration (SBA) are valid and

--to what extent SBA's management of the 8(a) program is deficient in this situation.

On December 4, 1980, we briefed your office on the results of our review and, at your request, are providing this written report. In addition to your inquiry, the BDM allegations have become the focus of an investigation by the SBA Inspector General, and the subject of hearings before the Senate Select Committee on Small Business. BDM also filed suit in the United States District Court for the District of Columbia seeking a declaratory judgment and injunctive relief. The court denied the injunction based on the finding of an insufficient showing of likelihood of success on the merits. The suit, however, is still pending before the court.

SCOPE AND METHODOLOGY

We conducted our review at SBA headquarters in Washington, D.C.; the SBA district and regional offices in San Francisco, California; the Department of the Army Materiel Development and Readiness Command in Alexandria, Virginia; the Sacramento Army Depot in Sacramento, California; Mare Island Naval Station in Vallejo, California; Eglin Air Force Base in Fort Walton Beach, Florida; and Nellis Air Force Base in Las Vegas, Nevada.

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We reviewed contract and 8(a) program files and conducted interviews to identify the process and procedures followed in qualifying Arcata for the 8(a) and Pilot Programs and in reserving and awarding contracts involving Arcata. We also reviewed applicable SBA rules and regulations and coordinated our efforts with those of the SBA Inspector General.

The overall question of Arcata's eligibility and the validity of the data used to establish its eligibility is under investigation by the SBA Inspector General. Thus, our analysis of eligibility is based on information contained in the SBA files. We did not review the files or financial records of Arcata or its principal owner nor did we independently assess Arcata's technical competence.

OVERVIEW

We believe that some of BDM's allegations concerning the SBA reservation and award of contracts to Arcata have merit. We found that SBA's management of Arcata's participation in the 8(a) program has been deficient.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)), as amended, gives SBA the authority to enter into contracts for goods and services with Federal agencies. SBA then subcontracts this work to selected small businesses. The purpose of this process, known as the 8(a) program, is to help socially and economically disadvantaged small businesses achieve a competitive position in the marketplace.

In October 1978, Public Law 95-507 amended Section 8(a) and, among other things, provided for a special contracting method between SBA and a Federal agency to be designated by the President. The Department of the Army was selected as the pilot agency in January 1979. In contrast to the "regular" 8(a) program, which calls for agencies to voluntarily offer contract requirements to SBA, the Pilot Program gives SBA the authority to reserve specific contract requirements for award to 8(a) firms.

Using its Pilot Program authority, SBA, in January 1980, formally reserved the Army's Combat Development Experimentation Command (CDEC) requirement for Arcata and in so doing halted the Army's attempt to procure its requirements through open competition. The CDEC work is an ongoing Army requirement involving the operation and maintenance of instrumentation equipment and the design, performance, and evaluation of technical experiments to assess weapons systems and tactical concepts. The CDEC work requires field experimentation and computer analysis of the results of those experiments under simulated combat conditions.

The CDEC contract (DAAG08-81-C-0119) was awarded to SBA and the related subcontract was awarded by SBA to Arcata on October 14, 1980. In 1971 and again in 1975, BDM won competitions for contracts

to perform that work. The contract is valued at about \$8.9 million per year and has options for 4 years which, if exercised, place the total value at over \$44 million.

ALLEGATIONS

After SBA reserved the CDEC requirement, in a May 5, 1980, letter to the General Counsel of SBA, BDM argued that the reservation should be withdrawn because the proposed award would be contrary to (1) statutory and regulatory competency requirements, (2) the intent of the Pilot Program, and (3) SBA's own eligibility standards and business plan requirements. Specific allegations in each of the above areas were then discussed. We evaluated nine specific allegations and found some have merit. The SBA Inspector General investigated another allegation and found it to be unsupported.

FINDINGS

We found that the following BDM contentions have merit because in our view, SBA awarded the \$8.9 million Army CDEC contract to a concern that

- will provide a service unrelated to (1) its capabilities as identified in its Business Plan or (2) the experience of its principal or professionals,
- was not evaluated for technical capability to perform, as required by SBA procedures,
- has not maintained its status as a small business because of the 8(a) awards it has received,
- has received in 1980 8(a) support that is almost four times the approved amount under SBA procedures,
- was allowed to select contract requirements and then change its business plan to reflect the capabilities required by the selected contract, and
- has not maintained a reasonable balance between 8(a) and non-8(a) sales.

Two additional allegations, involving the use of large business concerns and the determination of the firm's status as economically disadvantaged, were not supported by evidence gathered during our review.

The specific BDM allegations, related issues, and our analysis contain data of a proprietary nature and are being submitted under separate cover. Any further release of such data may be prohibited by title 18 U.S.C. §1905 (1976).

CONCLUSIONS

We believe that SBA's management of Arcata's participation in the 8(a) program has been deficient. In reserving and awarding the CDEC contract to Arcata, we believe senior SBA officials did not observe certain requirements of 13 C.F.R. §124.1 (and by reference 13 C.F.R. §121.3-8(e)) and SBA procedures. However, we cannot conclude on the basis of procedural violations that the award to Arcata was illegal. As mentioned previously, the question of legality is still pending before the United States District Court for the District of Columbia.

We believe that the award of a professional services contract such as CDEC to an 8(a) firm that must subcontract a major portion of the professional work raises questions regarding the extent to which an 8(a) firm may subcontract such work without becoming a mere conduit, and thus subvert the purposes of the program.

We also believe that SBA's procedures for determining economic disadvantage are ambiguous and leave too much to individual interpretation. Similar concerns were raised by the SBA Inspector General in 1979, and SBA responded by saying it was going to contract out a study to develop better economic criteria.

RECOMMENDATIONS

We recommend that the Administrator of the SBA thoroughly review the Arcata case with his Inspector General and determine whether Arcata's status and performance of this contract are consistent with established criteria and if not, whether termination of the contract and/or removal from the program are warranted.

We also recommend that the Administrator take appropriate action to ensure that all assistance to 8(a) firms complies with applicable statutory and regulatory authority and agrees with SBA's established procedures. Such action should include a more active role by SBA's internal surveillance groups with particular emphasis on ensuring that any assistance provided agrees with the firm's capabilities and objectives as reflected in its approved Business Plan.

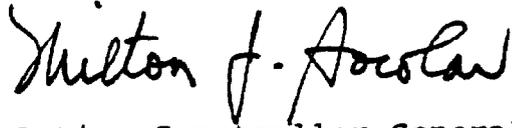
We recommend that the Administrator actively pursue the effort, promised in 1979, to insure that better and more specific economic eligibility criteria are produced at the earliest possible date.

As you requested, no official comments were obtained from SBA, Army, Arcata, Planning Research Corporation, or BDM on our findings, conclusions, and recommendations. As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date. At that time we will send copies to the Administrator of the SBA,

B-202228

the Director of the Office of Management and Budget, and to BDM, Army, Arcata, and Planning Research Corporation, and we will make copies available to other interested parties.

Sincerely yours,

A handwritten signature in black ink that reads "Milton J. Arcola". The signature is written in a cursive style with a large, prominent initial "M".

Acting Comptroller General
of the United States

Enclosure

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October 2, 1980

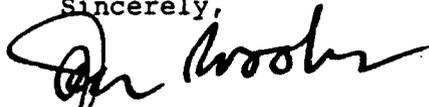
The Honorable Elmer B. Staats
 Comptroller General of the United States
 Washington, D. C. 20548

Dear General:

In July, 1980, the Committee requested GAO to conduct an inquiry into the matter of Arcata Associates obtaining or seeking to obtain large defense contracts through the Small Business Administration (SBA) and the provisions of P. L. 95-507. Concerns had been raised about (1) SBA management of its Minority Business Program, (2) possible improprieties involved in the award of contracts to Arcata, and (3) the competence of Arcata to properly perform these types of contracts. I understand that all of the military services have been approached by SBA on several contracts involving complex computer-based support services for weapons systems testing support operations.

In pursuing your review of this matter, I am specifically interested in (1) whether the allegations are valid and (2) to what extent SBA's management of the 8(a) program is deficient in this situation. Since this is an issue of great concern to this committee and other members of the Congress, I would hope that you would complete this investigation in an expeditious manner.

With best wishes, I am

Sincerely,

 Jack Brooks
 Chairman