

088764

11794

Feldman  
Proc II

GAO

United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-195449

October 23, 1979

The Honorable Fortney H. Stark, Jr.  
Member, House of Representatives  
7 Eastmont Mall  
Oakland, California 94605

Dear Mr. Stark:

We refer to your letter dated September 28, 1979 concerning [Arcata Associates, Inc.] and its efforts to negotiate a contract with the Navy for maintenance engineering services at the Combat Systems Technical Schools Command under the 8(a) program of the Small Business Administration.

As you point out, we previously closed our file because the Navy informed us that it resumed negotiations with Arcata after canceling the unrestricted procurement for these services. By mailgram of September 4, Arcata reinstated its protest, basically setting forth as its basis for protest its contentions that the Navy rejected its proposals for reasons which went beyond the statement of work. In addition, Arcata alleged bias because it believed that the Navy encouraged other firms to prepare for an unrestricted procurement at the time Navy was negotiating with Arcata under the 8(a) program.

On September 27, we summarily denied Arcata's second protest, and furnished your office with a copy. You may not have had the opportunity to review that decision prior to your most recent inquiry.

Our most recent decision, copy enclosed, points out that agency decisions not to enter into a section 8(a) contract, including decisions based on the evaluation of proposals submitted under the 8(a) program, generally are not matters for legal review by our Office under our bid protest function. In addition, we found that it is not improper for an agency to prepare or even conduct an unrestricted procurement while discussions are taking

This document is available to public readers  
DLG 028793



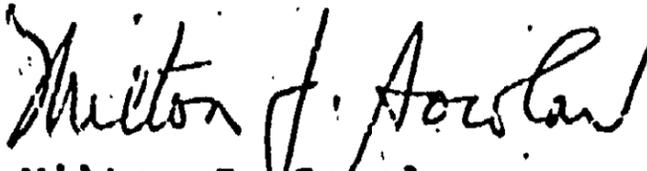
507574

B-195449

place with a potential 8(a) subcontractor. This is so because an agency may need to make an immediate award if the 8(a) negotiations are not successful.

We trust this will serve the purpose of your inquiry.

Sincerely yours,



Milton J. Socolar  
General Counsel

Enclosure