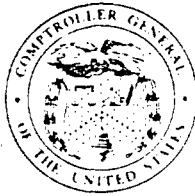


DECISION



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

60525

FILE: B-185042

DATE: February 17, 1976

MATTER OF: Baltimore Electronics Associates, Inc.

98600

DIGEST:

Determination by contracting agency not to set aside procurement under section 8(a) of Small Business Act is not subject to legal review by GAO.

The subject protest has been filed against the determination by the Agency for International Development (AID) not to set aside a requirement for award to the protester through the Section 8(a) subcontracting procedures of the Small Business Act and implementing regulations, and the consequential determination to procure the requirement on a competitive basis.

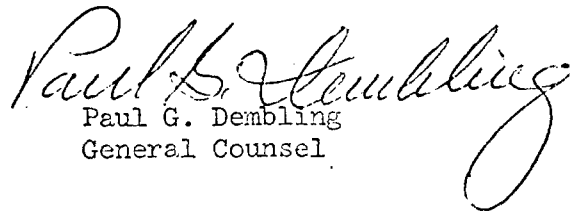
The prospective procurement contemplates a telecommunications contract to engineer, furnish and install a radio transmission facility (radio link) between Accra, Ghana and Lome, Togo. The stated purpose of this Foreign Assistance Act project is to improve the quality of transmission and the quantity of circuits between these African capitals, and to convert the regional toll telephone service between these cities from a manual to a semi-automatic operation. The decision by AID not to award the proposed contract to the protester through the 8(a) provisions was based upon a determination by AID that the protester lacked the requisite technical experience to successfully undertake a project of this nature. The protester charges AID with bias and prejudgment in the matter, complaining that it was not provided with sufficient specifications upon which to submit a "decent" proposal, and that any determination of its capabilities must be predicated upon an evaluation of such a proposal. Accordingly, the protester requests that no award be made on a competitive basis until the protester is permitted to submit a proposal; that AID conduct a hearing to determine the protester's qualifications; and that AID negotiate in earnest with the protester and consummate an award therewith if it can be demonstrated by the proposal that the protester is qualified to undertake the project.

Section 8(a) of the Small Business Act (SBA) (15 U.S.C. 637 (a)) authorizes the SBA to enter into contracts with any Government agency having procurement powers, and the contracting officer of such

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agency is authorized "in his discretion" to let the contract to SBA upon such terms and conditions as may be agreed upon between SBA and the procuring agency. It is clear that a determination not to set aside a procurement for an 8(a) award is not subject to legal review by our Office. See Wallace & Wallace Fuel Oil Company, Inc., B-182625, April 1, 1975, 75-1 CPD 191; Alpine Aircraft Charters, Inc., B-179669, March 13, 1974, 74-1 CPD 135. Whether or not a procurement should be set aside under section 8(a) is a matter for the contracting agency and the SBA to decide.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel