

DECISION



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

97
~~60988~~ 98826

FILE: B-185055

DATE: June 15, 1976

MATTER OF: Automation Information Data Systems, Inc.

DIGEST:

1. Protests questioning decisions to make "8(a)" set-asides will no longer be reviewed--in absence of showing of fraud or bad faith on part of officials--in view of broad discretion of SBA to enter into contracts with procuring agencies for purpose of letting subcontracts to 8(a) companies.
2. Since protester has not shown fraud or bad faith on part of SBA or HEW in making questioned 8(a) set-aside, award to 8(a) company cannot be questioned.

Automation Information Data Systems, Inc. (Automation), a small business, has protested the decisions of the Department of Health, Education, and Welfare (HEW) and the Small Business Administration (SBA) to enter into contract No. HEW-100-76-0066 for data processing services under authority of the "8(a) program" (a program designed to assist small business concerns owned and controlled by socially or economically disadvantaged persons). Acting under authority of the contract and the 8(a) program, SBA has subcontracted the data processing services involved to an "8(a)" company--Systems Management Associates, Inc. (SMA).

Automation, a non-8(a) company, questions whether SBA properly selected the data processing services for the 8(a) program. The company argues that SBA violated the provisions of paragraph 7, section 60-41, of its National Standard Operation Procedure (NSOP), which provide:

"Selection of Potential Contractors. SBA will, in consultation and cooperation with other Government departments and agencies, select proposed procurements suitable for performance by 8(a) concerns * * *

"Contracting Opportunities Not Acceptable for 8(a) Contracting.

* * * * *

"It is determined by the SBA that a small business concern may suffer a major hardship if the procurement is removed from competition thereby denying the concern otherwise historically dependent on such recurring procurement(s), the opportunity to compete. In establishing this determination, the affected firm should be a regular producer receiving one or more awards within the past year, and be dependent upon such recurring award(s) for a significant part of its sales." (Underscoring supplied.)

Automation argues that it had a prior HEW contract (secured under competition) for services nearly identical to those services involved in the award of the questioned 8(a) subcontract. The company further states that it is suffering a major hardship because of the removal from competition of the services in question. Thus, Automation concludes SBA and HEW incorrectly selected the services for an 8(a) award.

Since the filing of Automation's protest, we have decided that we will no longer review decisions to set aside procurements under the 8(a) program in view of the broad discretion accorded the SBA under the Small Business Act (15 U.S.C. § 637(a) (1970)) to enter into contracts with procuring agencies for the purpose of letting subcontracts to 8(a) companies. See Jets Services, Inc., B-186066, May 4, 1976. Pursuant to that decision, we will not review protests against 8(a) set-asides unless the protester shows fraud on the part of Government officials or such willful disregard of the facts by Government officials as to necessarily imply bad faith.

Automation has not alleged or demonstrated fraud or bad faith on the part of SBA or HEW in making the questioned set-aside. Rather, the company simply disagrees with the SBA-HEW position that Automation's prior contract is not sufficiently identical to the present 8(a) contract to require considering whether Automation is suffering a "major hardship" because of the 8(a) contract. Consequently, we cannot question the award to SMA.

Protest denied.


Acting Comptroller General
of the United States