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DECISION



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

FILE: B-186853

DATE: October 5, 1976

MATTER OF: Spot Commercial Maintenance, Inc.

DIGEST:

Protest questioning propriety of determination to set aside procurement under SBA's 8(a) program will not be considered by GAO absent, as here, any allegation of, or prima facie showing of, fraud on part of Government officials or such wilful disregard of facts as to necessarily imply bad faith.

Spot Commercial Maintenance, Inc. (Spot), protests a Small Business Administration (SBA) decision removing the mess attendant contract at Travis Air Force Base, California, from competitive bidding and setting the procurement aside for an award pursuant to section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1970). Spot was the incumbent small business contractor and alleges that it will suffer a major hardship by being denied an opportunity to compete for the follow-on contract.

In its September 15, 1976, report on the protest, SBA noted that in a memorandum dated June 4, 1976, an SBA District Office determined that Spot would suffer a major hardship if the procurement was placed under the 8(a) program. However, in its June 11, 1976, memorandum reversing the prior decision, the SBA Regional Office concluded (after reviewing the same data) that Spot would not suffer a major hardship if the procurement was removed from competition. By letter dated August 30, 1976, the Assistant Regional Director affirmed the reversal upon further analysis of the information in the record.

Regarding Spot's allegations as to the propriety of the determination to set aside the instant procurement under the 8(a) program, this Office has held that it will no longer review such determinations, absent a prima facie showing of fraud or such wilful disregard of the facts as to necessarily imply bad faith. See Jet Services, Inc., B-186066, May 4, 1976, 76-1 CPD 300; Holloway Enterprises, Inc., B-185645, May 18, 1976, 76-1 CPD 331.

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In view of the holdings in the cited cases and in the absence of any allegation of, or a prima facie showing of, fraud on the part of Government officials or such willful disregard of the facts as to necessarily imply bad faith, the issue raised by Spot is not subject to legal review. Accordingly, Spot's protest is dismissed.

William Foulke
for Paul G. Dembling
General Counsel