

L. Kozlakowski
Proc I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540**

01444

FILE: B-187919

DATE: January 12, 1977

MATTER OF: Jets Services, Inc.

DIGEST:

1. Question of concern's eligibility for award under 8(a) program is within discretion of SBA and is not subject to legal review by GAO.
2. Protest challenging adequacy of termination notice of present contract is matter for resolution pursuant to applicable contract provisions.

The subject protest has been filed against the determination by the Department of the Army to set aside a procurement for food services at Fort Carson, Colorado, under the section 8(a) subcontracting procedures of the Small Business Act (15 U.S.C. § 637(a) (1970)) and implementing regulations. Jets Services, Inc. (Jets), is the present contractor for such services.

Jets protests the propriety of awarding the contract to a concern which in its opinion is not an eligible 8(a) concern. Jets also complains that its present contract was terminated without sufficient notice. Additionally, Jets alleges that the ability of the 8(a) concern to make an offer on the services contract resulted from the Government divulging Jets' confidential and proprietary manhour and operating cost information.

The propriety of the determination to set aside the procurement in question under section 8(a) was the subject of our decision of May 4, 1976, to Jets. Jets Services, Inc., B-186066, May 4, 1976, 76-1 CPD 300. Although our decision affirmed the administrative position concerning the set-aside, we understand that because of administrative delays the actual set-aside was not effected until recently. Therefore, the protest appears timely. In that decision,

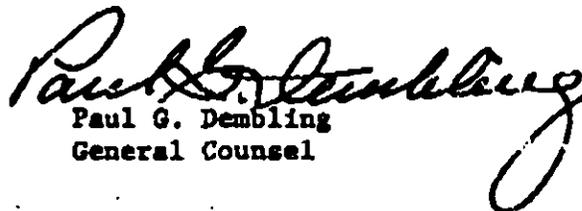
B-187019

we declined to take jurisdiction of Jets' protest as the decision whether or not a procurement should be set aside is a matter for the contracting agency and the Small Business Administration. Further, we pointed out that the issue whether a concern is eligible and needs 8(a) assistance is a matter of judgment for the SBA to decide and not our Office. The present protest does not raise any new issues concerning the 8(a) set-aside which were not covered in our decision of May 4, 1976, to Jets.

As to the new issues raised by Jets, the matter of cancellation of its contract and the sufficiency of the notice required must be resolved by the contracting parties pursuant to any applicable contract provisions and is not a proper matter for protest to this Office. Instrutek, Inc., B-184517, January 14, 1976, 76-1 CPD 2.

With regard to the contention that the Government divulged allegedly proprietary data, we have been advised by the Army that the manhour and operating cost information apparently referred to is a matter of public record in connection with Jets' performance of the present contract at Fort Carson.

Accordingly, we will not consider the protest.


Paul G. Dembling
General Counsel