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**DECISION**



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

**FILE:** B-192342

**DATE:** July 21, 1978

**MATTER OF:** Data Controls/North, Inc.

**DIGEST:**

Determination to set aside procurement under section 8(a) of the Small Business Act is matter for contracting agency and Small Business Administration, and will not be reviewed by GAO in absence of showing of fraud or bad faith on part of Government officials.

Data Controls/North, Inc. (Data) protests the award of a contract for tape conversion services under section 8(a) of the Small Business Act, 15 U.S.C. 637 (a)(1) (1976). Data contends that the setting aside of this contract for minority businesses constitutes illegal discrimination against non-minorities, and that the practice generally has resulted in a loss to Data of several thousand dollars over a six year period.

Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with any Government agency having procurement powers. The contracting officer of such agency is authorized "in his discretion" to let the contract to the SBA upon such terms and conditions as may be agreed upon between the SBA and the procuring agency. Whether a procurement should be set aside under section 8(a) therefore is a matter for the contracting agency and the SBA to decide. In view of the broad discretion vested in the contracting officer, we do not review determinations to set aside a procurement under section 8(a) unless the protester shows fraud on the part of Government officials or such willful disregard of the facts as to necessarily imply bad faith. Poli-Com, Inc., B-190030, March 16, 1978, 78-1 CPD 211; A.R. & S. Enterprises, Inc., B-189832, September 12, 1977, 77-2 CPD 186; Steamatic by M & S Tolcser, B-190799, December 22, 1977, 77-2 CPD 496; Jets Services, Inc., B-186066, May 4, 1976, 76-1 CPD 300. No such showing has been made here.

We point out that the section 8(a) program is designed to encourage the fostering and promotion of minority business enterprises, and has been upheld by the courts. Ray Baillie Trash Hauling, Inc. v. Kleppe, 477 F. 2d 696 (5th Cir. 1973). The fact that the program operates to the monetary detriment of a particular non-minority firm does not affect the validity of the program or of a specific set-aside. See Chemical Technology, Inc., B-190165, January 18, 1978, 78-1 CPD 46.

The protest is dismissed.

  
Paul G. Dembling  
General Counsel