

PL-CG

DECISION



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

10,824

FILE: B-195070

DATE: July 23, 1979

MATTER OF:

American Laundry

DL 702236

DIGEST:

[Protest of Agency Determination to Set-Aside Procurement]

1. <sup>a</sup> ~~The~~ Determination to set-aside procurement <sup>a</sup> under ~~section 8(a)~~ of Small Business Act, is matter for contracting agency and SBA; and will not be reviewed by GAO in absence of showing of fraud or bad faith on part of Government officials.
2. <sup>c</sup> ~~X~~ Although protester asserts that SBA 8(a) program violates Civil Rights Act of 1964 because of racial discrimination, courts have held that there is no merit to such assertion since eligibility standard of program is not defined racially but by social or economic disadvantage.

American Laundry, a nonminority firm, protests the setting aside for exclusive minority small business participation invitation for bids (IFB) No. DABT31-79-R-0101, issued by the Department of the Army (Army), Fort Leonard Wood, Missouri, for the operation of the base laundry/dry cleaning plant.

DL 602237

<sup>b</sup> ~~The~~ The protester asserts that the Army set-aside was improper because American Laundry allegedly received assurances from the Army in January 1977, after having furnished the Army a firm price quotation on the work, that it would be included in "any such potential contract." Further, American Laundry contends that the section 8(a) program illegally discriminates against nonminorities and violates the Civil Rights Act of 1964.

Section 8(a) of the Small Business Act (15 U.S.C. § 637(a), as amended by Pub. L. 95-507, October 24, 1978, 92 Stat. 1757), authorizes the SBA to enter into contracts

~~005044~~

with any Government agency having procurement powers. The contracting officer of the procuring agency is authorized in his discretion to let the contract to SBA. In light of that discretionary authority, we do not review determinations to award contracts under section 8(a) unless there is a showing of fraud on the part of Government officials or such willful disregard of the facts as to necessarily imply bad faith. See Chemical Technology, Inc., B-190165, January 18, 1978, 78-1 CPD 46; Jets Services, Inc., B-186066, May 4, 1976, 76-1 CPD 300. No such showing has been made here.

The alleged promise made by the Army in January 1977 to include American Laundry in a potential contract and the instant action more than 2 years later, to set aside the procurement for small business participation, does not in our opinion constitute a prima facie case of bad faith or fraud.

With regard to American Laundry's allegation that the 8(a) program violates the Civil Rights Act of 1964, because it discriminates on the grounds of race, the court held in Fortec Constructors v. Kleppe, 350 F. Supp. 171 (1972), that the eligibility standard of the program is not defined racially but by social or economic disadvantage. The court further stated that there is no merit to an assertion that the program was designed for awarding contracts on the grounds of race which would violate the Act.

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. See 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 nonminority firm does not affect the validity of the program or of a specific set-aside. See Data Controls/North, Inc., B-192342, July 21, 1978, 78-2 CPD 62.

The protest is dismissed.



Milton J. Socolar  
General Counsel