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PL-11
Mr. Baskin

DECISION



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

FILE: B-196800

DATE: December 4, 1979

MATTER OF: Jones Steel Erections, Inc. ^{D3458}

DIGEST:

2 Protest that SBA should have considered local ² contractors for award of construction contract will not be considered because whether a firm should receive a particular 8(a) contract is for determination by SBA and not this Office.

Jones Steel Erections, Inc., protests the proposed award to a Washington, D.C. company of a contract for construction of the Morgantown (West Virginia) Energy Technology Center under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a)(1), as amended by Pub. L. 95-507, October 24, 1978, 92 Stat. 1757.

Jones, a Morgantown firm, states that it has been a certified 8(a) contractor for more than one year yet it has received only two small contracts. It further states that Small Business Administration (SBA) representatives have complained that there have not been enough certified 8(a) contractors or agencies willing to participate in the 8(a) program in West Virginia. Thus, Jones contends that the regional office of the SBA should have been consulted as to possible competition by approved section 8(a) companies, such as Jones, in that geographic area.

The purpose of the 8(a) program is to assist small business concerns owned or controlled by socially and economically disadvantaged persons to achieve a competitive position in the marketplace. Certification of a firm by SBA is not a commitment to award a contract

[Protest Against Contract Award]

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or a continuing series of contracts to that firm. Wallace and Wallace Fuel Oil Company, Inc., B-182625, April 1, 1975, 75-1 CPD 191. SBA regulations provide that 8(a) contracts shall be negotiated on a limited competitive basis to the extent feasible and practicable. The regulations recognize that in some cases competition will not be feasible due to limited availability of qualified concerns, geographic considerations, or other factors. 13 C.F.R. § 124.8-2 (1979).

Because of the broad discretion afforded the SBA under the applicable statute and regulations, we do not question judgmental decisions under section 8(a), absent a showing of fraud or bad faith on the part of Government officials. Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39. Jones has made no such showing. Therefore, we will not consider the protester's objection to the award.

We note, however, that the protester alleges that the SBA West Virginia regional office had no knowledge of this procurement and that this may have resulted in SBA's failure to consider Jones for this work. We understand that the 8(a) contract has not yet been awarded. Therefore, by letter of today to the SBA, we are suggesting that the SBA review the protester's allegations and take whatever action it may consider appropriate.

The protest is dismissed.

Harry R. Jan Clevic
for Milton J. Socolar
General Counsel

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:

B-196800

December 4, 1979

The Honorable A. Vernon Weaver
Administrator, Small Business
Administration

Dear Mr. Weaver:

Enclosed is a copy of our decision of today on the protest of Jones Steel Erections, Inc. It appears from the allegations of the protester that the availability of that firm, which claims to be 8(a) certified to perform the contract in question, may not have been considered by your agency even though it is located in the area where the contract is to be performed. We therefore suggest that you review the matter with a view toward insuring that the actions taken here are consistent with the section 8(a) program.

We would appreciate advice of whatever action is taken.

Sincerely yours,

Harry R. Van Cleave
for Milton J. Socolar
General Counsel

Enclosure

