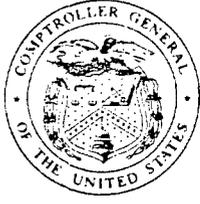


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P. J. Amicelli
Proc I



DECISION

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

FILE: B-197550 DATE: February 13, 1980

MATTER OF: Jazco Corporation DLG00476

DIGEST:

1. Determination whether to set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and SBA and will not be reviewed by GAO absent showing of fraud or bad faith on part of Government officials. EPA
AGC00024

SBA
AGC00002
2. Question of whether protester is eligible for contracts set aside under section 8(a) of Small Business Act is basically matter for determination by SBA and is not for review by GAO, absent showing of fraud or bad faith on part of Government officials.

*Protest
Against* →

Jazco Corporation (Jazco) protests against the Environmental Protection Agency's (EPA) proposed award of approximately eight contracts for performing emission test programs in support of the development of national emission standards from industrial stationary sources. The proposed procurements were synopsized in the Commerce Business Daily on January 9, 1980, and the synopsis stated that EPA anticipated that two of the contracts would be awarded on the basis of small business set-asides. As of the date Jazco filed its protest with our Office, the solicitations had not yet been issued by EPA.

Although the basis of Jazco's protest is not clear, it appears that Jazco wants EPA to set aside one or more of these procurements for exclusive participation by socially and economically disadvantaged firms under 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). Alternatively, Jazco may be asserting that it is or should be eligible for the 8(a) program if one or more of these procurements are set aside by EPA under the 8(a) program.

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Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to small businesses or other concerns. 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 agency determinations to set aside or not to set aside contracts for non-competitive section 8(a) award, unless there is a showing of fraud or bad faith on the part of Government officials. Thus, agency decisions not to enter into section 8(a) contracts generally are not matters for legal review by this Office under our bid protest function. Arcata Associates, Inc., B-195449, September 27, 1979, 79-2 CPD 228; American Laundry, 58 Comp. Gen. 672 (1979), 79-2 CPD 49; Multi-Mac Service Corporation, B-190360, October 21, 1977, 77-2 CPD 318.

The question of whether Jazco is eligible for the 8(a) program is basically a matter for determination by SBA and not this Office. Our review of SBA determinations under the 8(a) program is limited to determining whether SBA has followed its own regulations. Because of the broad discretion afforded SBA by statute, judgmental decisions under section 8(a), absent a showing of fraud or bad faith on the part of Government officials, will not be questioned. Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39. No showing that SBA has not followed its own regulations has been made and neither fraud nor bad faith on the part of any Government officials has been alleged in this case.

Accordingly, the protest is dismissed.

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