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DECISION

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

FILE: B-197673

DATE: February 25, 1980

MATTER OF: Leo Journagan Construction Co., Inc. *DL 600-78*

DIGEST:

[Protest raising various objections to decision to set aside procurements under section 8(a) of Small Business Act and to 8(a) contractor's subcontracting with large business is dismissed since such decisions are by law for contracting agency and Small Business Administration. *e*

Leo Journagan Construction Co., Inc. (Journagan) protests the Corps of Engineers' decision to set aside a timber clearing procurement (Group I clearing contract at Falls Lake) for a socially and economically disadvantaged contractor under the Small Business Administration's (SBA) "8(a)" program. Journagan objects to the noncompetitive nature of the 8(a) procurement, to the excessive contract award price and to the fact that the 8(a) firm has subcontracted a large portion of the work to a large business. The protester also raises objections to the 8(a) set-aside for the Group II project at Falls Lake. *AGC 000005*

Section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with any Government agency with procurement powers. The agency's contracting officer is authorized to let the contract to SBA "upon such terms and conditions" as may be agreed upon between the SBA and procuring agency. 53 Comp. Gen. 143 (1973). Therefore, we ordinarily will not review a determination to initiate a set-aside under section 8(a) because this determination is primarily a matter for the contracting agency and SBA. Arlandria Construction Co., Inc., B-195044, July 5, 1979, 79-2 CPD 10. Moreover,

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we point out that under the 8(a) program it is not unusual for contracts to be funded in amounts exceeding prices obtainable through unrestricted competition. See, e.g., Kings Point Manufacturing Company, Inc., 54 Comp. Gen. 913 (1975), 75-1 CPD 264. We have recognized that whatever additional price the Government pays when it utilizes 8(a) set-asides represents the cost of furthering the socio-economic goal of the 8(a) program -- helping 8(a) qualified firms to become self-sufficient. Arlandria Construction Co., Inc., supra.

We also point out that 8(a) applicants are not precluded from subcontracting with a large business. SBA's regulations require 8(a) applicants to disclose, in the business plan they submit to SBA, the extent to which nondisadvantaged firms will participate in an 8(a) contract, and 8(a) contractors may not subcontract any portion of the work without the written approval of the SBA contracting officer. 13 C.F.R. § 124.8-2(c) (1979). Obviously, the extent to which an 8(a) contractor may subcontract with a large business is within the discretion of the SBA and is also not subject to legal review by this Office.

Journagan points out that the set-aside of the Group II clearing project will have an adverse impact on small business competition for timber clearing projects. The courts, however, in recognizing the validity of the 8(a) program, have specifically noted that it necessarily operates to the disadvantage of other small businesses to some extent. Ray Baillie Trash Hauling, Inc. v. Kleppe, 477 F. 2d 696 (5th Cir. 1973). SBA, however, generally examines the impact on a small business concern of removing a procurement from competition and setting it aside for the 8(a) program. See Delphi Industries, Inc.--Request for Reconsideration, B-193212, January 30, 1979, 79-1 CPD 70.

The protest is dismissed.


Milton J. Socolar
General Counsel