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**DECISION**



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

*[Protest of Subcontract Award]*

FILE: B-197373

DATE: June 19, 1980

MATTER OF: MISSO Services Corporation

**DIGEST:**

1. GAO will not question SBA's choice of particular 8(a) firm for subcontract award absent showing of fraud or bad faith on part of Government officials.
2. Whether small business firm is manufacturer or regular dealer under Walsh-Healey Act is for determination by contracting agency subject to final review by SBA and Secretary of Labor, and thus will not be considered by GAO.

MISSO Services Corporation (MISSO) protests the selection by the Small Business Administration (SBA) of Computer Software Analysts, Inc. (CSA) for a subcontract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), as amended by Pub. L. No. 95-507, October 24, 1978, 92 Stat. 1757, to provide the National Guard Bureau with 54 minicomputer-based processing systems. The SBA, after accepting the requirement for the 8(a) program, had recommended to the Department of the Army (which was responsible for fulfilling the National Guard Bureau's needs) three 8(a) firms for consideration: MISSO, CSA and Systems Management Associates, Inc. (SMA). The Army then conducted a competition among the three firms, resulting in the Army's recommendation to SBA of CSA as the most capable of meeting the Government's requirements, with SMA also capable. MISSO was viewed as not having demonstrated that capability.

MISSO contends that under SBA's Standard Operating Procedure (SOP) 80-05 neither of the other 8(a) firms should have been considered eligible for this

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subcontract, and that neither SMA nor CSA is a "manufacturer or regular dealer" under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976).

The protest is dismissed.

In accordance with paragraph 25 of SOP 80-05, firms are approved for participation in the 8(a) program according to type of business (manufacturing, service, or construction, engineering and architecture) as reflected in the "business plan" an 8(a) applicant submits to the SBA. A "business plan" is defined in the paragraph as:

" \* \* \* a comprehensive planning document which clearly describes the business development objectives of the applicant concern, and what, how and where the resources needed to foster or expand its capabilities to participate in the economy as a self-sustaining profit-oriented small business will be obtained and utilized."

MISSO asserts that the instant subcontract involves capabilities other than those reflected in the business plans of CSA and SMA. On that basis, MISSO argues that SBA's selection of the firms was improper under paragraphs 53(c) and 64(a) of SOP 80-05, which respectively provide that "[i]n general, procurement support shall not be offered to an 8(a) concern to produce a product or provide a service unrelated to the concern's capabilities as identified in its business plan," and that a factor for consideration in selecting an 8(a) concern for a subcontract is the "[n]eed for the requirement to further the development objectives of the approved business plan \* \* \*."

Initially, we point out that paragraph 53(c) of SOP 80-05 only provides that "[i]n general" a business plan should control whether an 8(a) firm is to be offered particular procurement support, and paragraph 64(a) establishes the business plan's development objectives

only as a factor for consideration of whether a firm apparently qualified to perform a requirement should be selected (six other factors are listed).

In any case, whether or not a particular procurement falls within the parameters and goals of an 8(a) firm's business plan is a judgmental decision for the SBA which we will not review absent a showing of fraud or bad faith on the part of Government officials. See Tidewater Protective Services, Inc., B-190957, January 13, 1978, 78-1 CPD 33. Here, the SBA advises that before recommending MISSO, SMA and CSA to the Army, the SBA determined that the National Guard Bureau's requirement was consistent with the firms' approved business plans in accordance with SOP 80-05. MISSO's disagreement with the SBA in that respect provides no basis for our Office to consider the matter, and this portion of the protest is dismissed. Delphi Industries, Inc.--request for reconsideration, B-193212, January 30, 1979, 79-1 CPD 70.

With respect to whether CSA and SMA are manufacturers or regular dealers under the Walsh-Healey Act, the record indicates that neither the SBA nor the contracting officer consider the Act applicable because while the 8(a) contractor is expected to meet the National Guard Bureau's hardware needs through subcontracts with data processing system manufacturers the contract is viewed as primarily for services rather than supplies. Whether this categorization is correct is a question we need not decide since in any event the determination of whether a small business firm is a manufacturer or regular dealer under the Act rests in the first instance with the contracting agency, subject to final review by the SBA and the Secretary of Labor. Western Filament, Inc., B-192519, August 30, 30, 1978, 78-2 CPD 157. Therefore, even if the procurement is viewed as one primarily for supplies, we would not consider the status of CSA and SMA, and the protest on this issue also is dismissed.

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