

PL II
(4718)

DECISION



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

[Protest of Small Business Set-Aside Contract Award]

FILE: B-199855 DATE: August 25, 1980

MATTER OF: Intersystems, Inc.

DIGEST:

Question of whether firm is eligible for contract 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.

Intersystems, Inc. (Intersystems) protests the potential award of a contract to OAO Corporation (OAO) under the Small Business Administration's (SBA) section 8(a) set-aside program.

Request for proposals (RFP) No. CPD XW-79-00012-M-W7 was issued by the General Services Administration (GSA) for the purpose of obtaining certain automatic data processing (ADP) technical services. Four firms submitted proposals in a limited technical competition in which OAO was ranked first and Intersystems third. The protester now contends that OAO does not qualify as a small business and that an award to that firm under the 8(a) program would therefore be improper. Intersystems further argues that participation in the competition by a large firm "skewed" the technical evaluations and that the evaluations could not have been sufficiently thorough in any event since all four proposals were reviewed on a single day.

Section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The contracting officer is authorized

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"in his discretion" to let the contract to SBA. Thus, the question of whether OAO is eligible for the 8(a) program is basically a matter for determination by the 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. In view of the broad discretion afforded SBA by statute, judgmental decisions under section 8(a) will not be questioned 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; American Electronic Laboratories, Inc., B-199392, July 23, 1980, 80-2 CPD _____; Jazco Corporation, B-197550, February 13, 1980, 80-1 CPD 132.

Neither fraud nor bad faith is alleged in connection with the determinations of which Intersystems here complains, and there is no indication that the SBA failed to comply with its own regulations.

Accordingly, the protest is dismissed.

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