

Mr. Golden

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DECISION

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

FILE: B-202498

DATE: March 30, 1981

MATTER OF: BKK Company

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DIGEST:

[Protest Involving Eligibility]

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

BKK Company of Nevada, Inc. (BKK), the incumbent contractor for the vacuum truck operation at the atomic test site near Mercury, Nevada, protests the proposed award by the Small Business Administration (SBA) of the successor contract to JC Incorporated (JC). The prime contract was issued by the Department of Energy.

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BKK asserts that JC is ineligible to participate in the program authorized under section 8(a) of the Small Business Act because Julian Galindo Carrasco, the alleged owner and operator of JC, is "wealthy" and has a prior criminal record.

The question of whether JC is eligible for award under 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 the Government officials, will not be questioned. Intersystems, Inc., B-199855, August 25, 1980, 80-2 CPD 151; Jazco Corporation, B-197550, February 13, 1980, 80-1 CPD 132.

No showing has been made that the SBA has failed to follow its own regulations and neither fraud nor bad

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faith on the part of any Government officials has been alleged in this case. We note that BKK has filed an appropriate protest directly to the SEA concerning this matter.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel