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DECISION

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

Protest Against Disqualification as Subcontractor

FILE: B-202419

DATE: April 7, 1981

MATTER OF: Applied Resource Integration, Ltd.

DLG 06451

DIGEST:

In view of broad discretion afforded Small Business Administration under 8(a) program, GAO will not question disqualification of firm as subcontractor absent showing of fraud or bad faith on part of Government officials, or failure to follow applicable regulations.

DLG 06452

(Applied Resource Integration, Ltd. (ARI), protests the proposed award of a contract to Harold Russell Associates, Inc. (HRA), for a project entitled "Technical Assistance to States and Local Areas in the Development and Implementation of the Transportation Component of a Service Delivery Program on Independent Living" for the Department of Transportation, Urban Mass Transportation Administration (UMTA), under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1976).

ARI asserts that while the proposal in question was submitted by HRA, listing ARI as a subcontractor, in fact, ARI jointly prepared the proposal with HRA, and UMTA arbitrarily determined that ARI was an unacceptable subcontractor. ARI also objects to UMTA's providing HRA with a list of substitute subcontractors which included the name of a firm which had already participated in the preparation of a proposal as a subcontractor for one of the other competing 8(a) firms.

UMTA has advised us that a solicitation was issued as part of an informal selection process which it was using to aid in the determination of which firm it will recommend to the Small Business Administration (SBA) for award of a contract as a set-aside under the 8(a) program, which authorizes the SBA to enter into prime contracts with any Government agency having procurement powers, and to arrange for the performance of such

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contracts by letting subcontracts to socially and economically disadvantaged small business concerns.

In this instance, prior to recommending a firm to the SBA, UMTA issued a solicitation for the project and evaluated the three proposals which were submitted. UMTA has advised us that for 8(a) set-asides, while it does not have any applicable regulations, usually, as a matter of practice, it informally solicits proposals from four eligible 8(a) firms and conducts a limited technical evaluation of the proposals prior to selecting a firm for certification to the SBA. (In this instance, UMTA evaluated the HRA proposal as highest overall by a substantial margin but apparently determined that the components prepared by its subcontractor, ARI, were technically deficient. As a result, it invited HRA to resubmit its proposal using the services of a different subcontractor. In this connection it provided HRA with the names of five subcontractors, including the one to which ARI objects, as "simply a suggested list [which] places no requirement on [HRA] to participate with any of them over any other firm you may pick yourself." HRA has advised ARI that it is resubmitting its proposal using a subcontractor other than ARI.

Because of the broad discretion afforded the SBA and the contracting agencies under the applicable statute and regulations, our review of action under the 8(a) program is generally limited to determining whether the regulations have been followed and whether there has been fraud or bad faith on the part of Government officials. Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39.

In this instance, UMTA has indicated that after recommendation of a prospective contractor to SBA it obtains SBA's approval before entering into price negotiations with the proposed awardee. Thus, UMTA was acting on behalf of SBA in dealing with the competing 8(a) firms and evaluating their proposals, and the scope of our review, even with respect to the evaluation of the proposals, is limited as described above. Arawak Consulting Corporation, B-196010, June 11, 1980, 80-1 CPD 404.

Here, while ARI disagrees with the technical evaluation of the HRA proposal by UMTA, fraud or bad

faith has not been alleged. Arawak Consulting Corporation--Reconsideration, B-196010, September 5, 1980, 80-2 CPD 178. Accordingly, this matter is not for review by our Office. Moreover, the question of with whom and to what extent an 8(a) applicant subcontracts its award is within the discretion of SBA and is not subject to review by our Office. Vanguard Technologies Corporation, B-198705, June 17, 1980, 80-1 CPD 425.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel