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DECISION



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

FILE: B-202874

DATE: May 5, 1981

MATTER OF: JCO, Inc.

DIGEST:

Protest of Navy

Determination whether to set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and SBA and will not be reviewed by GAO absent showing of fraud or bad faith on part of Government officials.

JCO, Inc., protests the Navy's intention to procure grounds maintenance services at the Naval Air Station, Corpus Christi, Texas, through the Small Business Administration's (SBA) section 8(a) program instead of through competitive bidding. JCO requests that the Navy use competitive bidding to select the contractor for the grounds maintenance work because, as the prior contractor (1) JCO purchased equipment useful only in that type of work, and (2) JCO states that it released the Government from its prior contract (No. N62467-80-C-9322), believing that competitive bidding would be the method of selecting the next contractor.

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) 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 small businesses or other concerns. The contracting officer of the procuring agency is authorized "in his discretion" to let the contract to SBA. In light of that discretionary authority, we do not review agency determinations to set aside or not to set aside contracts for noncompetitive section 8(a) award, unless there is a showing of fraud or bad faith on the part of

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Government officials } Thus, agency decisions to enter into section 8(a) contracts are not subject to legal review by this Office under our bid protest function. Space Services International Corporation, B-201852, February 9, 1981, 81-1 CPD 145. Under the circumstances, [absent evidence of fraud or bad faith, we have no basis to review the Navy's determination.]

Further, [to the extent that JCO might question the Navy's action regarding the prior contract, JCO's remedy would be under that contract's disputes clause and not under our Bid Protest Procedures.]

Accordingly, [the protest is dismissed.]

Harry R. Van Cleave

Harry R. Van Cleave
Acting General Counsel