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**DECISION**



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

FILE: B-200070.2      DATE: May 29, 1981  
MATTER OF: JWM Corporation

**DIGEST:**

Protest of agency's withdrawal of procurement from program under section 8(a) of Small Business Act is dismissed since bad faith by procurement officials has not been shown.

JWM Corporation protests the Army's withdrawal of its procurement of certain battery chargers from the program authorized by section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1) (Supp. III 1979). After determining that it urgently required the chargers, the Army took this action because JWM refused to extend its offer at the Army's "estimated current fair market price" which JWM and SBA had previously agreed to. The estimated current fair market price is the price likely to be paid under normal competitive conditions. JWM states that it had previously expressed doubt about the reasonableness of the price, but agreed to it upon the condition that the Army affirm that it followed applicable regulations in calculating the price. JWM alleges that the Army failed to follow those regulations.

We dismiss the protest.

Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with Government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. However, by the terms of the Act, a Government contracting officer is authorized "in his discretion" to let the contract to SBA upon terms and conditions the agency and SBA agree to, 15 U.S.C. § 637(a)(1), supra. Therefore, contracting agencies and SBA have broad discretionary authority in this area, including the discretion to withdraw a procurement from the section 8(a) program, and we will not review such a decision absent showing of the possibility of fraud

*[Protest of Army Withdrawal of Procurement From 8(a) Program]*

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or bad faith on the part of Government officials. See Arcata Associates, Inc., B-195449, September 27, 1979, 79-2 CPD 228. Such evidence must include proof that the agency had the malicious and specific intent to injure the protester. See Arlandria Construction Co., Inc. -- Reconsideration, B-195044, B-195510, July 9, 1980, 80-2 CPD 21.

The evidence shows here that the price was agreed upon by JWM, SBA and the Army in September 1980; that SBA would provide additional funding as business development expense; that award was delayed to some extent because of confusion created by the protester in two letters which would have affected the contract delivery schedules; that the delay may have contributed to JWM's increased cost and its refusal to enter into a contract at the agreed price. In addition, since the procurement had been in progress for almost a year, the Army (according to the SBA) could not delay the procurement any longer and requested that SBA return the requirement so that it could be acquired without restriction. SBA agreed. While some of the delay in award may have been attributable to the Army, it is clear that there was little likelihood of an agreement in price without extended negotiations which the Army could not afford. There is, therefore, nothing to suggest that the withdrawal of this contract from the 8(a) program resulted from a specific intent to injure the protester.

In view of the foregoing, the other matters raised in the protest are academic.

The protest is dismissed.

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