

DECISION



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

FILE: B-208350

DATE: August 17, 1982

MATTER OF: Gateway Warehouse Services Corp.

DIGEST:

1. The determination of whether to set aside a procurement under section (8a) of the Small Business Act is a matter for the contracting agency and SEA. GAO will not review that determination absent a showing of fraud or bad faith on the part of Government officials.
2. The question of whether a proposed awardee is eligible for a contract set aside under section 8(a) of the Small Business Act is basically a matter for determination by the SEA and is not for review by GAO, absent a showing of fraud or bad faith on the part of Government officials.
3. Protester's request for a conference on the merits of the protest, which GAO will not consider, is denied because the conference would serve no useful purpose.

Gateway Warehouse Services Corp. (Gateway) protests against the Department of the Navy's (Navy) issuance of request for proposals (RFP) No. NOO228-82-R-7509 as a set-aside for exclusive minority small business participation. Gateway also questions whether the proposed awardee, Diversified Contracting Services (Diversified), is eligible for a contract set aside under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III, 1979).

We dismiss the protest.

Essentially, Gateway argues that the operation of a cold storage warehouse handling approximately 300 million pounds of merchandise is not appropriate for the 8(a) program. With respect to Diversified's

eligibility, Gateway questions whether Diversified still qualifies as an economically disadvantaged firm since Diversified has received several contracts in the last few years.

Section 8(a) of the Small Business Act authorizes the Small Business Administration (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 will not review protests against 8(a) set-asides unless the protester shows fraud on the part of Government officials or such willful disregard of the facts by Government officials as to necessarily imply bad faith. See American Laundry, 58 Comp. Gen. 672 (1979), 79-2 CPD 49.

The question of whether Diversified 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 Government officials, will not be questioned. See Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39. No showing that the SBA has not followed its own regulations has been made and neither fraud nor bad faith on the part of any Government official has been alleged in this case.

Accordingly, the protest is dismissed.

The protester's request for a conference on the merits of the protest, pursuant to 4 C.F.R. § 21.7(a) (1982), is denied because it would serve no useful purpose in light of our determination regarding the nature of the protest.

Harry R. Van Cleve
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Acting General Counsel