

DECISION

26890
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-211940**DATE:** November 21, 1983**MATTER OF:** Graphic Industries Association**DIGEST:**

1. The determination to set aside a procurement under section 8(a) of the Small Business Act is a matter for the contracting agency and the Small Business Administration, and therefore will not be reviewed by GAO absent a showing of possible fraud or bad faith on the part of government officials.
2. GAO generally will not review an agency decision to contract or not contract under the section 8(a) program, including when that decision is based on a cost comparison between the cost of in-house performance and contracting with an 8(a) firm, absent a showing of possible fraud or bad faith on the part of procurement officials.
3. The question of whether firm is eligible for assistance under section 8(a) of the Small Business Act is a matter for determination by the Small Business Administration, and thus is not subject to legal review by GAO.
4. Issues raised concerning a section 8(a) contractor's ability to perform are matters for determination by the Small Business Administration, not GAO.

Graphic Industries Association protests the Department of the Navy's decision to set aside a contract for the Small Business Administration's (SBA) 8(a) program, and the proposed award of that contract to REZA, Inc. We dismiss the protest.

Invitation for bids (IFB) No. N00600-83-B-1459 initially was synopsized by the Navy in the Commerce Business

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Daily (CBD) as a competitive total small business set-aside for graphic and illustration services. As publicized, the procurement involved a cost comparison in accordance with Office of Management and Budget (OMB) Circular A-76 to determine whether the Navy should contract for the services or continue in-house performance of the requirement. At the request of the SBA, the requirement subsequently was set aside under the SBA's 8(a) program and the IFB never was mailed to prospective bidders, even though the initial CBD synopsis had generated interest from more than 100 contractors.

The protester first argues that the IFB had in fact been "issued" by the Navy since it had reached the stage of a public offering through the CBD synopsis. Graphic contends that the Navy's actions in withdrawing the small business set-aside thus amounted to an improper cancellation of the solicitation. Second, the protester disputes that any valid cost comparison can be performed by the Navy where, as here, a noncompetitive 8(a) procurement is used as the basis for comparison; Graphic believes such a comparison would be illogical and counterproductive. Third, Graphic contends that REZA is not an eligible 8(a) firm because it allegedly is owned by an individual who is not a member of a group designated by regulation as socially disadvantaged. Finally, Graphic states that REZA is unable to satisfy the security clearance requirements of the solicitation, is not qualified as a corporation registered to do business in the District of Columbia, and otherwise does not have the capability to perform the required services.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), authorizes the 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. By the terms of the act, a government contracting officer is given the discretion to let the contract to SBA upon such terms and conditions as agreed to by the agency and the SBA. Because of the broad discretion afforded the SBA and the contracting agencies under the applicable statute and regulations, our review of actions under the 8(a) program generally is limited to determining whether the regulations have been followed and whether there has been possible fraud or bad faith on the part of government officials. Arawak Consulting Corporation, 59 Comp. Gen. 522 (1980), 80-1 CPD 404.

With respect to the four issues raised by the protester, we have held that in the absence of a showing of possible fraud or bad faith on the part of government officials:

(1) our Office will not review a determination to cancel a competitive solicitation and to initiate a set-aside under section 8(a), since that is a matter for the contracting agency and the SBA to decide. Arlandria Construction Co., Inc., B-195044, July 5, 1979, 79-2 CPD 10;

(2) we will not review the propriety of an agency's decision to contract or not to contract on the basis of a section 8(a) award, including when the decision is based on a comparison of costs between in-house performance and contracting with an 8(a) firm. See C.S. Smith Training, Inc., B-203108, June 8, 1981, 81-1 CPD 463;

(3) whether a firm's owner is socially disadvantaged, and thus whether the firm is eligible for the 8(a) program, basically is a matter for determination by the SBA and not our Office. Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39; and,

(4) the SBA is the appropriate forum to review issues concerning an 8(a) firm's ability (responsibility) to perform a contract. Maintenance, Incorporated, B-199854, August 27, 1980, 80-2 CPD 155.

Accordingly, and since the protester has not alleged possible fraud or bad faith, we have no basis to review its protest.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel