

DECISION

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

27830

FILE: B-214249 **DATE:** March 28, 1984
MATTER OF: Manassa Systems

DIGEST:

There is no basis to object to the withdrawal of a section 8(a) set-aside in the absence of a showing of fraud or bad faith on the part of government officials.

Manassa Systems (Manassa) protests the award of a contract for data entry services under General Services Administration (GSA) invitation for bids No. BO/TC-W-00453 (NEG 1), a small business set-aside. Manassa contends that an award for these services should have been made to it, the incumbent section 8(a) contractor, under invitation for bids No. BO/TC-W-00453 (NEG), which GSA first issued to the Small Business Administration (SBA) for a section 8(a) procurement and which it then disregarded in issuing the protested invitation.

We dismiss the protest.

In late October 1983, GSA notified SBA of its continuing need to procure essentially the same data entry services as were then being procured from Manassa under its soon-to-expire section 8(a) contract. SBA advised GSA that SBA would provide these services to GSA by awarding a contract to Manassa--which SBA had contacted on the matter--and that GSA should negotiate the contract with Manassa on behalf of SBA. Subsequently, GSA issued invitation BO/TC-W-00453 (NEG 1) as a small business set-aside. Manassa, upon learning of the issuance of the second invitation, spoke with the GSA contracting officer on or about November 8 regarding the conflict between the two set-asides. The GSA contracting officer, apparently, advised Manassa that it was within his discretion to issue the invitation on a nonsection 8(a) basis. When SBA, also in early November 1983, learned of the issuance of the second invitation, SBA, in correspondence with GSA, took exception to its issuance and asked that it be canceled inasmuch as SBA had not been advised of any withdrawal of the section 8(a) set-aside and, in any case, did not concur

028421

with the GSA decision. GSA denied the objection raised by SBA (the denial was received by SBA on November 23) and proceeded with the December 6, 1983, bid opening date. Award under invitation BO/TC-W-00453 (NEG 1) was made on January 13, 1984. The Manassa protest was received by our Office on January 30.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), authorizes SBA to enter into contracts with any government agency with procuring authority and to arrange for performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The contracting officer is authorized "in his discretion" to let the contract to SBA upon such terms and conditions as may be agreed upon by the procuring agency and SBA. In light of this broad discretion, we do not review agency determinations whether or not to set aside procurements under section 8(a) unless there is a showing of bad faith or fraud on the part of government officials. Anigroeg Services, Inc., B-206362.2, March 15, 1982, 82-1 CPD 241.

Given the broad discretion agencies possess in connection with the 8(a) programs, we fail to see any indication of fraud or bad faith on the part of GSA procurement officials. As in the Anigroeg case, supra, all we have here is a situation where the procuring agency initially indicated to SBA and the protester that the procurement would be an 8(a) set-aside and, in fact, issued such a solicitation, only to change its mind and withdraw the set-aside. As in the cited case, we find no evidence that GSA's action was motivated by bad faith, that is, a specific and malicious intent to harm Manassa.

Moreover, as in Anigroeg, it appears that the protest is untimely. The small business set-aside solicitation was scheduled for bid opening on December 6, 1983. Both Manassa and SBA protested to GSA prior to that date; nevertheless, GSA proceeded with bid opening on December 6, 1983. Manassa's protest was filed in our Office on January 30, 1984. Under our Bid Protest Procedures, 4 C.F.R. § 21.2(a) (1983), bid protests must be filed within 10 working days after formal notification of or actual or constructive knowledge of initial adverse agency action. Therefore, to

be timely, the protest was required to be filed within 10 working days of December 6, 1983, but was not filed until January 30, 1984.

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