

**DECISION**

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

**FILE:** B-215553 **DATE:** July 2, 1984  
**MATTER OF:** Kenko, Inc.

**DIGEST:**

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

Kenko, Inc. (Kenko), protests award of any contract under solicitation No. DACW37-84-R-0030, issued by the United States Army Corps of Engineers. Kenko contends that it had previously been selected for award of a contract to perform the work covered by the protested solicitation under the auspices of the Small Business Administration's (SBA) 8(a) program.

According to Kenko, after negotiations had been completed but before the prepared contract was executed, a local television station broadcasted false information concerning the validity of Kenko's qualifications to be an 8(a) contractor. Subsequent to that broadcast, the proposed contract was withdrawn from the 8(a) program and the present solicitation for the same work issued. Kenko requests reimbursement of marketing and proposal preparation expenses it incurred under the 8(a) procurement and cancellation of the present procurement.

Section 8(a) of the Small Business Act (15 U.S.C. § 637(a) (1982)) 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 government officials. Thus, agency decisions not to enter into section 8(a) contracts generally are not matters for legal review by this

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Office under our bid protest function. See Jazco Corporation, B-197550, Feb. 13, 1980, 80-1 C.P.D. ¶ 132, and cases cited therein.

Kenko has not alleged that the Army/SBA decision to remove the procurement from the 8(a) program results from fraud or bad faith on the part of government officials, and there is nothing in the record presented by the protester which shows any government action rising to the level of fraud or bad faith. Boone, Young & Associates, Inc., B-199540.3, Nov. 16, 1982, 82-2 C.P.D. ¶ 443; Wakon Redbird & Associates, B-205995, Feb. 8, 1982, 82-1 C.P.D. ¶ 111. The prior negotiations do not entitle Kenko to an 8(a) contract. Wakon Redbird & Associates, B-205995, supra, at 2.

Concerning the alleged broadcast of false information concerning Kenko's eligibility for the 8(a) program, the question of Kenko's eligibility for that program is a matter for consideration by the SBA and not this Office. See Jazco Corporation, B-197550, supra, at 2.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel