

DECISION

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

FILE: B-222153 **DATE:** April 28, 1986
MATTER OF: SES Development Corp.

DIGEST:

Protest that agency officials acted in bad faith in awarding a section 8(a) contract to a firm other than the protester is denied where the record establishes that the agency had an appropriate basis for its action and did not act with specific intent to harm the protester.

SES Development Corp. protests the award of a contract by the Peace Corps to Labat-Anderson, Inc., to train volunteers in water sanitation and related technology. SES asserts that the Peace Corps acted in bad faith in negotiating the contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982). Section 8(a) authorizes the Small Business Administration (SBA) to enter into contracts with any government agencies with procuring authority and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns.

We deny the protest.

The Peace Corps reports that it was seeking an 8(a) contractor to train Peace Corps volunteers in water sanitation and related technology for a 7 week training cycle. The Peace Corps talked to the protester, Labat-Anderson, and a third 8(a) contractor, and reviewed existing 8(a) contracts and procurements in progress. The Peace Corps also contacted Valdez Solar Consultants and Designers (Valdez), a firm specializing in solar energy, to ascertain the firm's availability as a potential subcontractor to the company that would be awarded the water sanitation training contract.

The Peace Corps states that during its review it learned that Labat-Anderson was presently performing an 8(a) contract to train volunteers, who would be sent to Africa, in crops/vegetable gardening, forestry/soil conservation, and water resource management. Since Labat-Anderson was qualified to

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perform the water sanitation training, the Peace Corps requested permission from the SBA to add this training to the existing contract with Labat-Anderson. The SBA approved, and the Peace Corps negotiated the contract with Labat-Anderson.

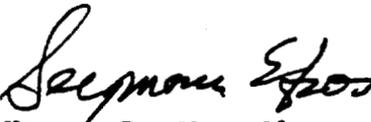
SES asserts that the Peace Corps acted in bad faith in modifying Labat-Anderson's contract to include the water sanitation training. The bases for the assertion are 1) SES's view that Labat-Anderson may not be able to perform the contract work adequately; 2) SES is at least as capable as Labat-Anderson, yet the Peace Corps did not fully consider the relative abilities of the two concerns; and 3) the Peace Corps suggested to Labat-Anderson that the firm consider the same training site and subcontractor--Valdez--that SES had selected in anticipation of receiving the contract.

We have recognized that section 8(a) of the Small Business Act authorizes a contracting approach that is not subject to the competitive and procedural requirements for non-8(a) procurements. Alliance Moving and Storage Co., Inc., B-217395, Jan. 8, 1985, 85-1 C.P.D. ¶ 28. We therefore review 8(a) contract awards only where the protester demonstrates the possibility of fraud or bad faith on the part of government officials or that applicable regulations may have been violated. Id. To sustain a charge of bad faith, the protester must prove that the contracting officer had a specific and malicious intent to harm the firm. Harris Corp., RF Communications Division, B-220387, Nov. 14, 1985, 85-2 C.P.D. ¶ 556.

SES clearly has not met its burden of proof. First, SES's concern about Labat-Anderson's capability reflects a disagreement with the Peace Corps' judgment, not improper government action. See Bermite Division, Whittaker Corp., B-205434, Nov. 23, 1981, 81-2 C.P.D. ¶ 423. Second, it is not relevant that SES also may be able to meet the Peace Corps' needs since 8(a) contractors may be selected without competition, so that there is no legal requirement that an agency review the relative capabilities of 8(a) firms before selecting one to perform an 8(a) contract. See Alliance Moving and Storage Co., Inc., B-217395, *supra*; Rexnord, B-205229, Dec. 8, 1981, 81-2 C.P.D. ¶ 450. Finally, the record shows that Valdez had worked for other Peace Corps training contractors and, although it had been contacted by SES as a potential subcontractor if SES received the 8(a) award, had no particular ties to SES. We see nothing improper in the Peace Corps' recommending Valdez, a known

subcontractor, to Labat-Anderson (if in fact that happened), simply because SES had made contact with Valdez. Also, the site selected to perform the training by both SES and Labat is a state college campus with, as noted by the Peace Corps, no documented connection to SES.

In our view, the Peace Corps' selection of Labat-Anderson did not reflect a specific intent to harm the protester, but rather a good faith choice of one of perhaps a number of competent 8(a) firms. Since we are aware of no regulations that were violated by the selection of Labat-Anderson, the protest that Peace Corps officials acted in bad faith is denied.

for 
Harry R. Van Cleve
General Counsel