



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Buck, Allmond & Co.

**File:** B-236382

**Date:** November 6, 1989

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### DIGEST

Protest against the proposed award of a contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988), is denied where the protester, which alleged that the procuring agency improperly favored a particular 8(a) contractor, has failed to show that the procurement officials acted fraudulently or in bad faith.

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### DECISION

Buck, Allmond & Co. protests the proposed award of a contract to KOH Systems, Inc., for support services for the Department of Energy's (DOE) uranium enrichment program. The contract is to be awarded under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988). Section 8(a) authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of such contracts by letting sub-contracts to socially and economically disadvantaged businesses.

We deny the protest.

On March 16, 1989, DOE notified SBA that it desired to reserve the requirement for an award under SBA's 8(a) Program. DOE nominated KOH to perform these services based on DOE's familiarity with KOH's technical qualifications which the firm demonstrated under a current contract with another DOE office. The uranium enrichment program director, after breaking down the tasks and determining the requirements and necessary personnel, concluded that although the work consisted of a combination of services under Standard Industrial Classification (SIC) codes 7379 (computer related services) and 8721 (accounting, auditing, and bookkeeping services), 60 percent of the work reflected SIC code 7379. Therefore, DOE submitted to SBA a proposed

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statement of work (SOW) classified under SIC code 7379. However, SBA reviewed the proposed SOW and determined that the SOW indicated that SIC code 8721 was applicable, not SIC code 7379. (KOH did not qualify under SIC code 8721.) DOE, with SBA's approval, revised the SOW two times before SBA finally concluded that the SOW indicated that SIC code 7379 was indeed applicable. On May 12, SBA authorized DOE to initiate negotiations with KOH, a qualified 8(a) contractor under SIC code 7379, and on May 31, KOH submitted its proposal. On July 27, SBA received the proposed contract from DOE. Following the filing of this protest on July 31, SBA stopped the procurement action.

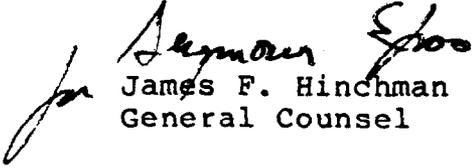
The protester alleges that DOE improperly favored KOH by changing the SOW and the SIC code in order to insure that KOH received the contract award. The protester further alleges that a former DOE official, now an executive at KOH, influenced DOE's actions.

Since contracts are let under section 8(a) of the Small Business Act to the SBA at the contracting officer's discretion and on such terms as agreed upon by the procuring agency and SBA, the decision to place a procurement under the 8(a) Program and the award of an 8(a) subcontract are not subject to our review absent a showing of fraud or bad faith on the part of government officials or that regulations may have been violated. To make a "showing" of fraud or bad faith, we require the protester to present facts that reasonably indicate that the government actions complained of were improperly motivated. See Action Building Sys., Inc., B-235583 et al., Sept. 19, 1989, 89-2 CPD ¶ \_\_\_\_.

Here, the protester has failed to make the required showing. Contrary to the protester's assertions, there is nothing improper in a contracting agency determining, without seeking competition, to make a proposed award to a particular 8(a) firm. Rather, SBA's regulations specifically permit the contracting agency to nominate a particular 8(a) firm where that agency has determined that the recommended concern has unusual technical qualifications to perform. See 13 C.F.R. § 124.301(c)(4)(xii)(C) (1989). In turn, the SBA may then award the contract to the firm designated by the agency. Here, we think the fact that DOE was familiar with the technical qualifications of KOH and preferred to award an 8(a) contract to that particular firm does not in any way establish fraud or bad faith on the part of the agency. We further note that the SBA specifically approved the SIC code and approved the award selection decision in all respects. Accordingly, we deny this protest ground.

Finally, the protester provides no evidence in support of its allegation of influence by a former DOE official who the protester contends is now a key executive at KOH. In this respect, the protester has failed to identify the alleged individual. DOE officials involved in this procurement have denied the existence of any relationship with KOH executives. Thus, our Office will not further consider the protester's unsupported allegation.

The protest is denied.

 James F. Hinchman  
General Counsel