

DECISION

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

FILE: B-185583

DATE: March 11, 1976

MATTER OF: Welmetco, Ltd.

60628

98496

DIGEST:

Determination by contracting agency not to set aside procurement under section 8(a) of Small Business Act is not subject to legal review by GAO.

On December 17, 1975, the Department of the Army, Headquarters, United States Army Armament Command, Rock Island, Illinois, issued request for proposals (RFP) No. DAAA09-76-R-0037. The RFP sought offers for the design, layout, procurement, installation and trial run of one or more production line facilities to be located in the contractor's plants for the manufacture and assembly of metal parts for M42/M46 grenades. The objective of the procurement was to establish one or more mobilization base production lines to effectively and economically manufacture and assemble the metal parts for the subject grenades. The procurement was thus issued on an unrestricted basis.

Subsequent to the issuance of the RFP, Welmetco, Ltd., filed a protest with our Office arguing that the Army had improperly denied its request to have a portion of the subject procurement set aside under the Small Business Administration's (SBA) 8(a) program.

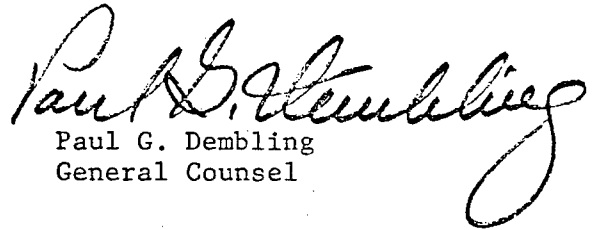
During the pendency of the protest our Office issued a decision on another protest which relates to the subject matter of the instant protest. That decision, Baltimore Electronic Associates, Inc., B-185042, February 17, 1976, holds that GAO will no longer review determinations by contracting agencies not to set aside procurements under section 8(a) of the Small Business Act. The decision states in pertinent part that:

"Section 8(a) of the Small Business Act (SBA) (15 U.S.C. 637(a)) authorizes the SBA to enter into contracts with any Government agency having procurement powers, and the contracting officer of such agency is authorized 'in his discretion' to let the contract to SBA upon such terms and conditions as may be agreed upon between SBA and the procuring agency. It is clear that a determination not to set aside a procurement for an 8(a) award is not subject

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to legal review by our Office. See Wallace & Wallace Fuel Oil Company, Inc., B-182625, April 1, 1975, 75-1 CPD 191; Alpine Aircraft Charters, Inc., B-179669, March 13, 1974, 74-1 CPD 135. Whether or not a procurement should be set aside under section 8(a) is a matter for the contracting agency and the SBA to decide."

In view of the holding in Baltimore Electronic Associates, Inc., supra, the issues raised by Welmetco are not subject to legal review and, accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel