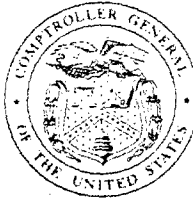


DECISION



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

Proc II
GAO p 4

10,6602

FILE: B-195044

DATE: July 5, 1979

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MATTER OF: Arlandria Construction Co., Inc.

[Protest of IFB Cancellation]
DIGEST:

Determination to cancel competitive solicitation and set aside procurement under section 8(a) of Small Business Act, even though higher priced contract may result, is matter for contracting agency and SBA and will not be reviewed by GAO in absence of showing of fraud or bad faith on part of Government officials.

AGC 44424

Arlandria Construction Co., Inc. (Arlandria), protests the Department of the Army's (Army) decision to cancel invitation for bids (IFB) Nos. DAHC36-78-B-0108, DAHC3C-79-B-0010, and DAHC3C-79-B-0015, and to set aside the procurement for a minority contractor under the Small Business Administration's (SBA) "8(a)" program.

AGC 44442

Each of the three solicitations for this procurement was canceled by the contracting officer because of price unreasonableness. Following these cancellations, a decision was made to award the contract under section 8(a) of the Small Business Act. Arlandria objects to the negotiation of this procurement with a minority contractor because it believes that the firm's initial proposal under the 8(a) set-aside exceeds Arlandria's rejected bid price.

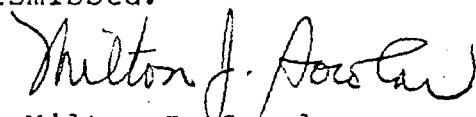
Section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with any Government agency having procurement powers. The contracting officer of such agency is authorized "in his discretion" to let the contract to the SBA "upon such terms and conditions" as may be agreed upon between the SBA and the procuring agency. 53 Comp. Gen. 143 (1973). Therefore, we have recognized that the determination to cancel a competitive solicitation and initiate a set-aside under

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section 8(a) is a matter for the contracting agency and the SBA to decide. Echols Electric, Inc., B-194123.2, April 6, 1979, 79-1 CPD 242. In view of the broad discretion vested in the contracting officer, we do not review determinations to set aside a procurement under section 8(a) unless the protester shows fraud on the part of Government officials or such willful disregard of the facts as to necessarily imply bad faith. Data Controls/North, Inc., B-192342, July 21, 1978, 78-2 CPD 62; Poli-Com, Inc., B-190030, March 16, 1978, 78-1 CPD 211; Chemical Technology, Inc., B-190165, January 18, 1978, 78-1 CPD 46. No such showing has been made here.

The fact that an 8(a) firm's price under the set-aside may be higher than the protester's rejected bid price in the canceled prior procurements is not legally objectionable. Under the 8(a) program, it is not unusual for contracts to be funded in amounts exceeding prices that would be obtained through unrestricted competition. See, e.g., Kings Point Manufacturing Company, Inc., 54 Comp. Gen. 913 (1975), 75-1 CPD 264. Such 8(a) set-aside contracts are made in order to assist small business concerns owned and controlled by socially and economically disadvantaged persons to achieve a competitive position in the market place. The Government, by increasing the participation of such firms in Federal procurements, anticipates that these firms eventually may become self-sufficient, viable businesses capable of competing effectively in unrestricted procurements. Whatever additional price the Government may pay when it utilizes 8(a) set-asides is merely the cost of furthering this socio-economic goal. Thus, we cannot view the IFB cancellations as improper merely because the contracting agency viewed the bids received under open competition as unreasonably high even though a higher priced contract may be awarded under the 8(a) set-aside.

The protest is dismissed.


Milton J. Socolar
General Counsel