

14053 PL-1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

[Protest of GSA Contract Award]

FILE: B-198705

DATE: June 17, 1980

MATTER OF: Vanguard Technologies Corporation

DIGEST:

Protest by prospective subcontractor of one offeror against award of contract under section 8(a) of Small Business Act to another offeror is dismissed, since potential subcontractor is not "interested party" pursuant to GAO Bid Protest Procedures.

Vanguard Technologies Corporation (Vanguard) has protested against the proposed award of a contract to OAO Corporation for automated data processing services for the General Services Administration under section 8(a) of the Small Business Act (15 U.S.C. § 637(a), as amended by Pub. L. 95-507, October 24, 1978, 92 Stat. 1757).

While the protest was pending, award was made and our Office was notified pursuant to Federal Procurement Regulations § 1-2.407-8(b)(3) (1964 ed. amend. 68).

The protester is a proposed subcontractor of Systems and Applied Sciences Corporation (SASC), another offeror for the 8(a) contract, which has not protested to our Office.

Vanguard contends that OAO Corporation does not qualify as a section 8(a) concern because its gross receipts for the preceding 3 fiscal years exceed the allegedly applicable small business size standard, that the firm intends to subcontract a substantial portion of the work to a large business concern, and that the award should be reconsidered in favor of SASC's offer.

We believe, however, that Vanguard is not an "interested party" under our Bid Protest Procedures,

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4 C.F.R. § 20.1(a) (1980), for the purpose of consideration of its protest. Photonics Technology, Inc., B-196437, November 7, 1979, 79-2 CPD 337. We have held that we would recognize the rights of proposed or possible subcontractors to have their protests considered on the merits where there is a possibility that recognizable interests would be inadequately protected if our bid protest forum were restricted to offerors in individual procurements. Abbott Power Corporation, B-186568, December 21, 1976, 76-2 CPD 509; Infodata Systems, Inc., B-190479, November 21, 1977, 77-2 CPD 390. The issues raised by Vanguard are, in our opinion, not only sufficiently protected by restricting protesters to those who submitted offers, but also more appropriately considered by another forum.

Vanguard's protest questions the propriety of an award to OAO Corporation. Because the right it asserts is that of SASC to the award, it is likely to be most zealously protected by SASC itself. Further, Vanguard would not accrue any right to a subcontract award as a result of a successful protest or the award of the 8(a) contract to SASC. Vanguard's interest in the relief requested is, therefore, entirely contingent upon factors outside the contract award process. Elec-Trol, Inc., 56 Comp. Gen. 730 (1977), 77-1 CPD 441.

Moreover, whether a firm is eligible for the 8(a) program is basically a matter for determination by the Small Business Administration (SBA), not GAO. Our review of SBA determinations under the 8(a) program is limited to determining whether SBA has followed its own regulations. Because of the broad discretion afforded SBA by statute, judgmental decisions under section 8(a) will not be questioned absent a showing of fraud or bad faith on the part of Government officials. Jazco Corporation, B-197750, February 13, 1980, 80-1 CPD 132; Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39.

We also point out that 8(a) applicants are not precluded from subcontracting with a large business; the extent to which an 8(a) contractor may do so is within the discretion of SBA and is also not subject to

legal review by our Office. Leo Journagan Construction Co., Inc., B-197673, February 25, 1980, 80-1 CPD 158.

We therefore conclude that development and consideration of this matter as a bid protest would serve no useful purpose. Accordingly, the protest is dismissed.

for *Harry R. Van Clime*
Milton J. Socolar
General Counsel