

Mr. Donohue
PLII, 4744

DECISION



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

*[Protest of Agency Decision to Set Aside Procurement Under Section 8(a)
of Small Business Act]*

FILE: B-199665

DATE: August 26, 1980

MATTER OF: Industrial Maintenance Services, Inc. *CNG 00513*

DIGEST:

1. Determination whether to set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and Small Business Administration and is not reviewed by GAO absent showing of fraud or bad faith on part of Government officials.
2. Whether firm should remain eligible for contracts awarded under section 8(a) of Small Business Act is judgmental matter for Small Business Administration.

Industrial Maintenance Services, Inc. (Industrial) protests agency decisions to set aside food services contracts at Ft. Myer, Virginia, Columbus Air Force Base, Mississippi, and the Naval Air Station, Pensacola, Florida, for socially and economically disadvantaged contractors under section 8(a) of the Small Business Act. Industrial is the incumbent contractor and asserts that the set-asides will have an undue impact on it. Industrial also objects on the basis that an intended awardee under the set-aside has already received several million dollars worth of contracts under the 8(a) program. *DLG 5162
DLG 005163
AGC 006051*

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, authorizes the Small Business Administration (SBA) to enter into contracts with any Government agency with procurement powers and to arrange for the execution of such contracts by letting subcontracts to socially and economically disadvantaged small businesses. Agency contracting officers are authorized in their discretion to let contracts to SBA. In view of this discretionary authority, we do not generally review agency

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determinations to set aside contracts for section 8(a) awards unless it appears that the determinations resulted from fraud or bad faith on the part of Government officials. E-Z Tight, Inc., 59 Comp. Gen. 122 (1979), 79-2 CPD 394; American Electronic Laboratories, Inc., B-199390, July 23, 1980, 80-2 CPD _____. There is no allegation of fraud or bad faith in this case. Consequently, we have no basis to consider Industrial's objection to the set-aside decisions.

With respect to the potential awardee's prior receipt of 8(a) contracts and continued eligibility for 8(a) contracts, SBA regulations provide for such eligibility until the firm has "substantially achieved the goals of its business plan" or is terminated from the program for cause. 13 C.F.R. § 124.1-1(d) and (e) (1980). Whether a firm has achieved its goals is a judgmental decision for SBA which is reached only after a hearing is held. 13 C.F.R. § 124.1-1(d)(3) and (4). We do not question these judgment matters under our Bid Protest Procedures. Kings Point Mfg. Co., Inc., 54 Comp. Gen. 913 (1975), 75-1 CPD 264. We are, however, referring Industrial's correspondence to our audit staff for possible consideration in its ongoing review of the 8(a) program.

The protest is dismissed.

Harry R. Van Cleave

For Milton J. Socolar
General Counsel

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:

B-199665

August 26, 1980

The Honorable Howell Heflin
United States Senate

Dear Senator Heflin:

We refer to your letter to our Office dated August 6, 1980 in regard to the protest of Industrial Maintenance Services, Inc., concerning decisions to set aside food services contracts for socially and economically disadvantaged contractors under section 8(a) of the Small Business Act.

By decision of today, copy enclosed, we have dismissed the protest.

In accordance with your request, we are also returning the material you forwarded to this Office with your letter.

Sincerely yours,

Harry R. Van Cleave
for Milton J. Socolar
General Counsel

Enclosures

