

Mr. ALKON
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DECISION



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

FILE: B-199392.2 DATE: September 2, 1980

MATTER OF: American Electronic Laboratories,
Inc. - Reconsideration

DIGEST:

[REQUEST FOR]

Prior decision dismissing protest of section 8(a) set-aside is affirmed upon reconsideration since protester, alleging that procurement is inappropriate for set-aside, that Small Business Administration acted improperly in certifying it could perform contract, and that intended awardee could not perform, has not shown that prior decision was based on errors of fact or law.

American Electronic Laboratories, Inc. (AEL) requests reconsideration of our decision in American Electronic Laboratories, B-199392, July 23, 1980, 80-2 CPD, in which we dismissed AEL's protest of the Army's setting aside a procurement under section 8(a) of the Small Business Act.

The procurement was set aside under section 8(a) (1)(B) of the Act when the Small Business Administration (SBA) certified itself to be competent to perform the contract. See Pub. L. 95-507, § 202, October 24, 1978, 92 Stat. 1761. Under this section of the Act, Army contracting officers are to enter into an 8(a) contract with SBA whenever SBA certifies that it is "competent and responsible" to perform the contract. We held that under the circumstances there was no basis for legal objection to the set-aside decision.)

The thrust of (AEL's complaint) continues to be that this procurement is too technically complex for small business and that the particular firm which would receive the subcontract is not competent to perform the work. These are matters, however, which

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are within the exclusive province of SBA to determine. We will, under our Bid Protest Procedures, review 8(a) set-aside decisions only if there has been a showing of bad faith or fraud on the part of Government officials. E-Z Tight, Inc., 59 Comp. Gen. 122 (1979), 79-2 CPD 394. While AEL complains that the SBA acted arbitrarily and improperly here and suggests that SBA "may" have done so for political reasons pertaining to its administration of the 8(a) program, such unsupported speculation does not constitute the required showing of possible fraud or bad faith. In short, [we find nothing of substance in AEL's request for reconsideration that we did not previously consider in concluding that the AEL protest should be dismissed.] Accordingly, since there has been no showing of error of fact or law in our prior decision, see 4 C.F.R. § 20.9 (1980), that [decision dismissing the protest is affirmed.]

Harry R. Van Cleave

For The Comptroller General
of the United States