

DECISION



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

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[Protest of Agency Determination Not to Set Aside Procurement Under Section 8(a) Program]

FILE: B-200618

DATE: October 14, 1980

MATTER OF: Edwards Trucking Company, Inc.

DIGEST:

Determination by contracting agency not to set aside procurement under section 8(a) of Small Business Act is not for review under bid protest function of General Accounting Office.

Edwards Trucking Company, Inc. (Edwards) protests the determination by the Department of Commerce (Commerce) not to set aside an award for transportation services to the protester through the section 8(a) subcontracting procedures of the Small Business Act and implementing regulations, and the consequential determination to procure the requirement on a competitive basis.

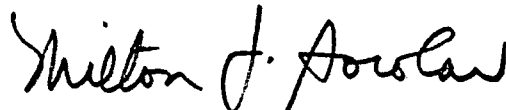
Edwards was the eighth year incumbent for these services pursuant to prior "8(a)" awards but was informed that, as a matter of "prudent business judgment," Commerce's requirements would be competitively procured because of a current investigation of Edwards by the Grand Jury of the United States District Court for the District of Columbia. The protester believes that Commerce's determination is "inexcusable and seriously prejudices [its] constitutional rights" inasmuch as no indictment has been returned.

Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with any Government agency with procuring authority and to arrange for the performance of such contracts by letting subcontracts to small businesses or other concerns. By statute, a Government contracting officer, however, is authorized "in his discretion" to let the contract to SBA upon the terms and conditions agreed to between the SBA and the procuring agency. 15 U.S.C. § 637 (a)(1) (1976) as amended by Pub. L. No. 95-507, § 202, 92 Stat. 1761. Therefore, we have

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held that the contracting agencies and SBA have broad discretionary authority in this area. See Kings Point Manufacturing Company, Inc., 54 Comp. Gen. 913 (1975), 75-1 CPD 264. This is so regardless of whether the action being challenged relates to a procuring agency decision not to set aside a procurement for a noncompetitive section 8(a) award, Baltimore Electronics Associates, Inc., B-185042, February 17, 1976, 76-1 CPD 105; Alpine Aircraft Charters, Inc., B-179669, March 13, 1974, 74-1 CPD 135, or to an agency decision to withdraw a procurement from the section 8(a) program. Newton Private Security Guard and Patrol Service, Inc., B-186756, November 30, 1976, 76-2 CPD 457. Thus, an agency's decision not to enter into a section 8(a) contract generally is not a matter for legal review by this Office under our bid protest function. See Multi-Mac Service Corporation, B-190360, October 21, 1977, 77-2 CPD 318; Arcata Associates, Inc., B-195449, September 27, 1979, 79-2 CPD 228.

Accordingly, [the protest is dismissed.]



Milton J. Socolar
General Counsel