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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20546

FILE: B-205422

DATE: December 11, 1981

MATTER OF: Automated Business Systems and  
Services, Inc.

**DIGEST:**

1. Protest by an 8(a) firm against the contracting agency's rejection of its proposal and subsequent decision to withdraw the procurement from the Small Business Administration "8(a)" program is dismissed because the protester has not alleged or shown fraud or bad faith by the procurement officials in the agency's negotiations, proposal evaluation or decision to withdraw the procurement from the program.
2. Protester's remedies with respect to its contention that the Government is estopped to deny the existence of an "8(a)" subcontract with the firm should be pursued under the Contract Disputes Act of 1978, 41 U.S.C. § 601, et seq. (Supp. III, 1979).

Automated Business Systems and Services, Inc. (ABSS); protests the rejection of its proposal in response to Internal Revenue Service (IRS) solicitation No. 81-63 and the IRS's subsequent decision to withdraw its requirement for specification analysis and hardware evaluation for a Revenue Accounting Control System from the Small Business Administration (SBA) section 8(a) program.

ABSS complains that its proposal was rejected on the basis of benchmark tests of equipment from Data General Corporation, ABSS's proposed subcontractor for the IRS requirements. The protester asserts that notice of its rejection was furnished to the SBA rather than to ABSS and that benchmark testing was a matter of "responsiveness" which IRS

should have attempted to negotiate with ABSS. ABSS concludes that IRS is estopped to deny the existence of a contract with ABSS with which it has been negotiating since December 1980 and that IRS has not conducted negotiations with ABSS, as it was authorized to do by SBA, in accordance with procurement procedures.

For the reasons discussed below, we find that the matters raised by the protester are not appropriate for our review.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1976), authorizes the SBA to enter into contracts with Government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. Due to the broad discretion afforded SBA and contracting agencies under the act and implementing regulations, our review of action under the 8(a) program is generally limited to determining whether the regulations have been followed and whether there has been fraud or bad faith on the part of Government officials. Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39.

IRS selected ABSS as an 8(a) concern technically qualified to satisfy its needs and requested SBA authority to negotiate with ABSS. See Federal Procurement Regulations (FPR) § 1-1.713-2(d) (1964 ed. amend. 202). We have held that where, as here, the contracting agency obtains SBA approval to negotiate with an 8(a) firm, the agency is acting on behalf of SBA in dealing with the firm and evaluating its proposal. Therefore, our review with respect to IRS's proposal evaluation is limited to the considerations described above. Applied Resources Integration, Ltd., B-202419, April 7, 1981, 81-1 CPD 265; Arawak Consulting Corporation, B-196010, June 11, 1980, 80-1 CPD 404.

We have recognized that section 8(a) of the act authorizes a contracting approach which in general is not subject to the procedural requirements of Federal procurement statutes and implementing FPR provisions concerning discussion of technical proposal deficiencies. Arawak Consulting Corporation, *supra*. Moreover, ABSS states that IRS conducted three technical proposal

review meetings with the firm prior to the benchmark tests during which ABSS personnel were advised of proposal deficiencies and asked for additional information. Another meeting was held between the two benchmark testing sessions in which the IRS specification was reviewed and revised. Considering the extensive discussions between the parties, we cannot conclude that IRS's decision not to conduct further negotiations with ABSS after the second benchmark test was improper. While ABSS obviously disagrees with IRS's rejection of its proposal, the protester has not alleged fraud or bad faith in the evaluation; therefore, this matter is not for review by our Office.

Further, we have held that in view of the broad discretionary authority vested in contracting agencies, we will not review an agency's decision to withdraw a set-aside from the 8(a) program absent allegations of fraud or bad faith on the part of Government officials. JWM Corporation, B-200070.2, May 29, 1981, 81-1 CPD 422; W. M. Grace, Inc., B-201248, February 10, 1981, 81-1 CPD 89. Because ABSS has neither alleged nor shown conduct of this nature, we will not review IRS's decision to withdraw its requirements from the program.

Finally, we think that under these circumstances, the protester's remedies with respect to its contention that the Government is estopped to deny the existence of a contract on the basis of the parties' conduct should be pursued under the Contract Disputes Act of 1978, 41 U.S.C. § 601, et seq. (Supp. III, 1979).

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel