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J. J. ...

DECISION



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

FILE: B-205995

DATE: February 8, 1982

MATTER OF: Wakon Redbird & Associates

DIGEST:

1. Absent showing of fraud or bad faith, GAO will not consider protest complaining that procurement of cadastral survey should have been negotiated with protester under § 8(a) of Small Business Act, because decision to award 8(a) contract is within the discretion of contracting officials.
2. Buy Indian Act does not require that particular Government contracts be set aside for exclusive participation of Indian firms and GAO therefore will not consider complaint that procurement should have been set aside for Indian firms unless there is a clear showing of abuse of discretion by agency.

Wakon Redbird & Associates (Redbird) protests the failure of the Department of the Interior, Bureau of Land Management (BLM) to set aside the procurement of a cadastral survey to be performed in Alaska for exclusive participation by socially and economically disadvantaged firms under the Small Business Administration's 8(a) program. Redbird alleges that BLM is soliciting bids for this work on an unrestricted basis. Redbird says, in this respect, that twice before (in January of 1980 and 1981) it was involved in negotiations for an 8(a) contract to perform this work and underwent partial audits of its books only to have the project canceled due to lack of funds. Redbird believes that its investment of time and money in the prior negotiations with BLM now entitles it to an opportunity to negotiate an 8(a) contract. Alternatively, Redbird believes that the project is so closely tied to the Indian community that the Buy Indian preference should apply.

The protest is dismissed.

First, we consider Redbird's contention that the contract should be procured under § 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III 1979), which authorizes the Small Business Administration (SBA) to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small businesses concerns. The statute authorizes the procuring agency's contracting officer to award the contract to SBA "in his discretion." In light of the broad discretion given contracting officials to let contracts to SBA by statute, we do not review an agency decision to set aside or not set aside contracts for 8(a) award, unless there is a showing of fraud or bad faith on the part of Government officials. Jazco Corporation, B-197550, February 13, 1980, 80-1 CPD 132; Harris System Pest Control, Inc., B-199636, May 27, 1981, 81-1 CPD 413. Redbird does not allege that BLM's decision to procure outside of the 8(a) program results from fraud or bad faith on the part of Government officials, and we do not view the facts recited by the protester as rising to the level of fraud or bad faith. The prior negotiations do not legally entitle the protester to an 8(a) contract.

Redbird's second complaint, that Indian firms should be given preference under the Buy Indian Act, 25 U.S.C. § 47 (1976), is also not subject to our review. Under the statute, the Secretary of the Interior has broad discretionary authority to promote the purchase of the products of Indian industry. However, the law does not require that particular Government procurements be set aside exclusively for participation by Indian firms.

Therefore, we decline to review individual decisions not to limit a procurement to Indian firms under the Buy Indian Act unless there is a clear showing of an abuse of the broad discretion conferred by the Act. Vallie Enterprises, B-200339, May 29, 1981, 81-1 CPD 423. No such showing has been made here.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel