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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of:        Electronic Systems Associates, Inc.  
File:              B-228685  
Date:              August 17, 1987

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### DIGEST

In view of the broad statutory discretion granted a contracting agency in determining whether to award a section 8(a) program contract, the General Accounting Office will not review a contracting agency's decision not to award such a contract under that program absent some reasonable showing that the agency's decision was made fraudulently or in bad faith or that regulations were violated in making the decision.

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### DECISION

Electronic Systems Associates, Inc. (ESA) protests the decision of the Naval Regional Contracting Center Philadelphia, to issue request for proposals (RFP) No. N00140-87-R-9837 on an unrestricted basis rather than to contract for the requirement with the Small Business Administration (SBA) under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982 and Supp. III 1985).

We dismiss the protest.

In response to a Commerce Business Daily synopsis which set forth the Navy's requirement for an integrated office system, ESA sent the Navy a letter dated May 21, 1986, requesting that the requirement be "set-aside" for an 8(a) contractor. At about the same time SBA also requested that the Navy consider awarding a contract for the requirement under section 8(a). The Navy did not respond to either request until July 10, 1987, at which time the agency stated in a letter to ESA that it had in fact reviewed the SBA request and had decided that the requirement was not suitable for the 8(a) program due to the complexity of the work and the significant amount of anticipated large business subcontracting that would be required. The Navy noted that it had neglected to provide SBA with a timely written response to the request.

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ESA contends that the Navy acted in bad faith by failing to respond to the SBA request and by failing to consider ESA's qualifications. Our Office does not review contracting agency decisions regarding whether or not to conduct procurements under the section 8(a) program absent a showing of possible fraud or bad faith on the part of government officials or a showing that regulations have been violated. This is so because such decisions are by statute within the discretion of the agencies to make and therefore, no firm has a right to require the government satisfy a specific procurement need through the 8(a) program or award a contract through the program to that firm. Sam Gonzales, Inc.--Reconsideration, B-225542.2, Mar. 18, 1987, 87-1 CPD ¶ 306.

Here, ESA offers no evidence in support of its allegation of fraud or bad faith other than the fact that the agency was late in sending its response to the SBA inquiry. The Navy did reply to the SBA's request by setting forth the reasons why it would not grant the request. The protester also does not demonstrate the violation of any pertinent regulations. The regulations alleged to have been violated, DAR 1-05.5 1/ and Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.502-2 (1986), and have no bearing on ESA's protest. Some reasonable showing of fraud or bad faith or that a particular regulation has been violated is necessary before we will consider a protest based on such allegations. Sam Gonzales, Inc.--Reconsideration, Id.

The protest is dismissed.

*Ronald Berger*  
for Ronald Berger  
Deputy Associate  
General Counsel

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1/ Apparently, the reference to "DAR" is to the superseded Defense Acquisition Regulation. There is no section 1-705.5 in the current Federal Acquisition Regulation.